Supreme Court, U.S.
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In The

Supreme Court of the United States

OCTOBER TERM, 1975

No. 76-29

COMPLETE AUTO TRANSIT, INC.,
Appellant,

vs.

CHARLES R. BRADY, JR., CHAIRMAN MISSISSIPPI STATE TAX COMMISSION,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JURISDICTIONAL STATEMENT

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COMPLETE AUTO TRANSIT, INC.,
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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the Supreme Court of the State of Mississippi (Appendix "A") is reported at 330 So. 2d 268. The opinion of the Chancery Court of Hinds County, Mississippi (Appendix "B") is not reported.

JURISDICTION

This action was commenced in the Chancery Court of Hinds County, Mississippi, pursuant to Section 10121.1, Mississippi Code of 1942 (now codified as Section 27-65-47, Mississippi Code of 1972, Annotated, Vol. 9, page 52) seeking a refund of privilege

taxes assessed against Appellant Complete Auto Transit, Inc. The decree of the Chancery Court upholding the assessment was entered on August 6, 1974 (Appendix "C"). Upon timely appeal, the order of the Chancery Court was affirmed by the Supreme Court of the State of Mississippi, which held that the privilege tax statute was constitutionally valid as applied to Complete Auto Transit, Inc. The judgment of the Mississippi Supreme Court affirming the trial court's determination was entered on April 13, 1976 (Appendix "D"). Notice of appeal was filed in the Mississippi Supreme Court on June 9, 1976 (Appendix "E") This Court has jurisdiction of this appeal pursuant to 28 U. S. C. § 1257(2). *Dahnke-Walker Milling Co.* v. *Bondurant,* 257 U. S. 282 (1921); *Colonial Pipeline Co.* v. *Traigle,* 421 U. S. 100 (1975).

QUESTION PRESENTED

The following question is presented by this appeal:

Whether the state of Mississippi may constitutionally impose a tax on the Appellant for the privilege of engaging in exclusively interstate commerce.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

This appeal is predicated upon the Interstate Commerce Clause of the Constitution of the United States (Art. 1, § 8, cl. 3), which provides that Congress shall have the power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

The following statutes were in effect at all times relevant to this litigation:

Section 10105 of Mississippi Code of 1942 (now codified as Section 27-65-13, Mississippi Code of 1972, Annotated, Vol. 9, page 12), which reads as follows:

> There is hereby levied and assessed, and shall be collected, privilege taxes for the privilege of engaging or continuing in business or doing business within this state to be determined by the application of rates against gross proceeds of sales or gross income or values, as the case may be, as provided in the following sections.

and Section 10109 (2), Mississippi Code of 1942 (codified as Section 27-65-19 (2), Mississippi Code of 1972, Annotated, Vol. 9, page 20, Appendix "F"),* which provided in part as follows:

> Upon every person operating a pipeline, railroad, airplane, bus, truck, or any other transportation business for the transportation of persons or property for compensation or hire between points within this State, there is hereby levied, assessed, and shall be collected, a tax equal to five per cent (5%) of the gross income of such business. . . .

STATEMENT OF THE CASE

This case involves an assessment for privilege taxes imposed upon Appellant Complete Auto Transit, Inc. (Complete Auto), a Michigan corporation. Pursuant to authority granted by the Interstate Commerce Commission, Complete Auto operates in every state

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*The statute was amended effective as of August 1, 1972 so as to exclude the transportation of property. 1972 Laws of the State of Mississippi, Chapter 506. The statute as amended appears in Mississippi Code of 1972, Annotated, Supp. to Vol. 9, pages 14-15.

in the United States, with the exception of Alaska and Hawaii. Complete Auto is engaged in the business of transporting motor vehicles (cars and trucks) by motor carrier for General Motors Corporation (General Motors). All of the vehicles involved in this case were shipped by General Motors from various assembly points located outside of the State of Mississippi to designated General Motors dealers in the State of Mississippi. The vehicles were shipped to the dealers in Mississippi via rail for a portion of the journey; the transportation was completed by Complete Auto. The interchange between the rail carrier and Complete Auto took place at a railhead ramp in Jackson, Mississippi.

The State Tax Commission, acting under Sections 10105 and 10109 (2), set out hereinabove, assessed a privilege tax on Complete Auto, measured by the gross revenues earned by Complete Auto for transporting the vehicles from the railhead in Jackson, Mississippi, to the various General Motors dealers located in Mississippi. (No tax was assessed on any portion of the gross income received by Complete Auto for transporting vehicles from the Jackson, Mississippi railhead to dealers located outside the State of Mississippi). The assessment was predicated on the State Tax Commission's position that the transportation of the vehicles from Jackson to the dealers in Mississippi constituted intrastate commerce. The assessment was in the amount of $167,375.30, for the period August 1, 1968 through July 31, 1972. It is undisputed that the tax levied constituted a tax on the *privilege* of conducting the business.

Upon the trial of the case, the following undisputed facts were established.

Pursuant to its agreements with various General Motors dealers located within the State of Mississippi and elsewhere, General Motors was obligated to manufacture motor vehicles as specifically ordered by each of the dealers and to deliver these vehicles to the dealer at the dealer's location (R. 83). All of the motor vehicles were manufactured at plants located outside of the State of Mississippi (R. 85).

When an order for a particular vehicle was received by General Motors from a dealer, the vehicle was assembled. General Motors then made the decision as to which carrier or carriers would be used to transport the vehicle to the dealer. Since the contract required General Motors to deliver the automobiles at each dealer's location (showroom), it was necessary that the delivering carrier be a motor carrier rather than a rail carrier; in fact, many of the vehicles were transported the entire distance by a motor carrier. However, when greater distances from the assembly point to the delivery points were involved, it was more economical to utilize rail transportation where possible (R. 87). Accordingly, General Motors often used rail carriers for a portion of the journey, and motor carriers, either common or contract, for the last portion of the journey (R. 88).

All transportation arrangements were made before the vehicle was shipped from the assembly plant; prior to shipment each vehicle was labelled and identified with respect to the particular dealer to whom the vehicle was to be delivered (R. 95). Indeed, General Motors billed the dealer for the automobile when the vehicle was delivered to the railroad (R. 104). Once a vehicle was delivered to the carrier, General Motors

had absolutely nothing further to do with the vehicle. The vehicle was in the care, custody, and control of the carriers from that point until the vehicle was delivered to the dealer. Transportation charges for transportation to the dealer's location were paid by General Motors, and General Motors was reimbursed by the dealer for this cost (R. 104). Thus, it is clear from the record that the destination of each vehicle was clearly identified at the time that it was delivered to the railroad, and there is no evidence in the record which indicates that any vehicle was ever diverted from the originally designated destination.

After the rail carrier portion of the journey was completed, the rail carrier transferred the vehicle directly to the motor carrier in Jackson, Mississippi (R. 100). No representative of General Motors was present at the interchange from the rail carrier to the motor carrier (R. 132).

The mechanics for working out the interchange of the vehicles at Jackson were that Complete Auto rented a small parcel of land, together with a small office located thereon, from the railroad (R. 126). When the vehicles arrived in Jackson on railcars, they were unloaded by the railroad and placed on railroad property. As soon as practicable, usually within twenty-four to forty-eight hours, a representative of Complete Auto, together with a representative of the railroad, would inspect each vehicle to see if it had sustained any damage during the rail portion of the journey. If the vehicle was not damaged, it was turned over by the railroad representative to Complete Auto for the continuation of the transportation to the dealer (R. 117). If the vehicle had been damaged, this was noted on a document signed by a representative of the rail carrier and a representative of Complete Auto, and the vehicle was then transferred to Complete Auto for completion of the journey to the dealer (R. 130-32). During the period of time involved in this case, an average of approximately 300 vehicles per day were transferred by the rail carrier to Complete Auto at the Jackson interchange point (R. 101).

The assessment of the tax at issue here was predicated on the State Tax Commission's position that the continuation of the transportation of automobiles from Jackson to the dealers' locations in Mississippi was intrastate commerce. The original pleading filed by Complete Auto in this cause alleged that the activities constituted interstate commerce and, therefore, were not subject to the tax (Paragraph 5, Bill of Complaint, R. 6). The case presented in the trial court centered on the factual question—whether the operations of Complete Auto consisting of transporting automobiles from Jackson to various dealers' locations in Mississippi constituted interstate or intrastate commerce.

The opinion of the trial court (Appendix "B") held that the tax could be constitutionally imposed even though the activities constituted interstate commerce, since all of the income upon which the tax could be imposed was derived from transportation within the State of Mississippi. Thus, the constitutional question presented by this appeal formed the basis for the holding of the trial court.

On appeal, Complete Auto raised two issues: first, whether its activities were purely and solely interstate commerce; and second, whether the state could constitutionally impose a privilege tax on purely interstate commerce.

As to the first issue, Complete Auto reiterated its position that the transportation sought to be taxed was an integral part of continuous interstate movement, although it clearly appears that the trial court had determined that the activities of Complete Auto were of an interstate character (See Opinion of the Chancery Court, Appendix "B"). In basing its decision on the constitutional issue, the Mississippi Supreme Court necessarily determined that the activities of Complete Auto were of an interstate character.

As to the second issue, the Supreme Court affirmed the trial court. In upholding the validity of the statute the Mississippi Supreme Court held that a state can constitutionally impose a privilege tax on the conduct of a purely interstate business, so long as the tax is nondiscriminatory and is fairly apportioned to operations within the state. Thus, the constitutional issue presented by this appeal was entertained by and formed the basis of the decision of the Supreme Court of the State of Mississippi.

THE QUESTION IS SUBSTANTIAL

The issue presented to the Mississippi Supreme Court was the constitutional validity of a Mississippi statute which imposes a tax on the privilege of doing business within Mississippi, even though the activities of the taxpayer were solely and purely activities in interstate commerce. In upholding the statute, the opinion of the Supreme Court of Mississippi completely ignores (and does not even cite, much less attempt to distinguish) the leading decision of this Court on this issue, *Spector Motor Service* v. *O'Connor*, 340 U. S. 602 (1951).

Spector held that a state may not impose a privilege tax upon the business of carrying on interstate commerce. *Spector* held invalid a tax imposed expressly upon "the privilege of carrying on or doing business within the State . . .", 340 U. S. at 603 n. 1. Indeed, the statute declared invalid in *Spector* was almost identical to the Mississippi statute at issue in this case, which imposes the tax upon ". . . the privilege of engaging or continuing or doing business within this state. . . ."

Nor does the Mississippi Court's opinion make any reference to *Railway Express, Inc.* v. *Virginia*, 347 U. S. 359 (1954) (*Railway Express I*) in which the Court invalidated a license tax imposed expressly "for the privilege of doing business . . ." in the state. 347 U. S. at 361 n. 5. It was only after the Virginia statute was modified, so as to impose the tax on the taxpayer's property rather than on the privilege of doing business, that it was able to withstand constitutional attack. See *Railway Express, Inc.* v. *Virginia*, 358 U. S. 434 (1959) (*Railway Express II*).

The holdings of *Spector* and *Railway Express* are concisely summarized in *Colonial Pipeline* v. *Traigle*, 421 U. S. 100, 112 (1975), where this Court stated:

> *Spector* held invalid under the Commerce Clause a Connecticut tax based expressly "upon [the corporation's] franchise for the privilege of carrying on or doing business within the state . . . ." Similarly, *Railway Express I* invalidated Virginia's "annual license tax" imposed on express companies expressly "for the privilege of doing business" in the State. Thus both taxes, as express imposts upon the privilege of carrying on an exclusively

interstate business, contained the same fatal constitutional flaw . . . .

The Mississippi Court's decision made no reference whatsoever to the *Colonial Pipeline* decision.

It is abundantly clear that the Mississippi statute here involved also contains the "same fatal constitutional flaw" that was found in *Spector* and in *Railway Express I.* Furthermore, it was only by repealing and eliminating this "unconstitutional basis" for the tax that Louisiana was able to enact a taxing statute that would pass constitutional muster. The earlier Louisiana statute discussed in *Colonial Pipeline* had levied the tax "for the privilege of carrying on or doing business . . . in this State." 421 U. S. at 102. After the earlier statute was declared unconstitutional by a Louisiana court, the Louisiana Legislature amended the statute there involved by providing for three "alternative incidents" upon which the tax might be imposed, 421 U. S. at 103-04. It was the revised form of the statute that the Court upheld in *Colonial Pipeline.*

Despite the fact that the taxing statute involved in this case is virtually identical to the earlier unconstitutional Louisiana statute and the statutes held invalid in *Spector* and *Railway Express I,* the Mississippi Supreme Court has held in the present case that a privilege tax upon a purely interstate business is valid so long as it is not discriminatory and if there is no danger of interstate commerce being smothered by the cumulative taxes of several states. The Mississippi Supreme Court relied on the theory enunciated in the plurality opinion in *Interstate Oil Pipe Line Co.* v. *Stone,* 337 U. S. 662 (1949). *Interstate Oil Pipe Line,* however, predated *Spector,* and the *Spector* opinion clearly

limited the plurality opinion in *Interstate Oil Pipe Line* to its facts. See 340 U. S. at 609-610. Indeed, the theory adopted by the Mississippi Supreme Court in the present case is exactly the same theory advanced by the two Justices concurring separately in *Colonial Pipeline,* 421 U. S. at 115, which a majority of the Court declined to adopt.

As Mr. Justice Brennan noted in *Colonial Pipeline* the constitutional problem presented by this case is "a perennial one," 421 U. S. at 101. It is unusual, however, for a state appellate court to do as the Mississippi Supreme Court has done and to steer a course so clearly prohibited by the decisions of this Court. There is not even a semblance of an attempt to reconcile the Mississippi decisions with this Court's holdings; in this case it is not contended that the tax is levied upon the existence of any local incident, such as doing business in the corporate form. (Complete Auto had paid all franchise and income taxes imposed by the state.) Rather there is a naked assertion of the power to place a tax on the privilege of conducting a purely interstate business. Thus, we submit that there is no basis on which the Mississippi Court's decision can be reconciled with *Spector, Railway Express I,* or *Colonial Pipeline.*

This case is of major significance to all common and contract carriers transporting goods or passengers, as well as to other businesses of an interstate character. The rule adopted by the Supreme Court of Mississippi would allow the imposition of any privilege tax on interstate travel or commerce so long as the tax was nondiscriminatory and was applied only to the income fairly apportioned to activities conducted within the state. A failure to review and reverse the opinion of the Supreme Court of Mississippi will invite the Mississippi State

Tax Commission to assert similar taxes against other taxpayers in spite of the existing constitutional prohibitions against such taxes.

It is apparent that the decision of the Mississippi court, unless reversed, may well lead other states to attempt to impose other privilege taxes on Complete Auto. Since Complete Auto operates in 47 states other than Mississippi, the potential hardship created for this particular taxpayer is clear. In addition, there are numerous other carriers whose business closely approximates the business of Complete Auto, who would also be subject to such taxes.

Moreover, this case will not only have a substantial effect far beyond the hardships it will impose on Complete Auto and similar carriers, but it will also have a significant effect on the transportation industry generally. Each state with a sales or other privilege tax of general applicability could contend that every interstate carrier is (and has been) subject to such tax on that portion of its gross revenue which can be in some way apportioned to the state. The tax burden could be enormous, and its effect would be all the more overwhelming since it could be imposed retroactively to the extent permitted by the applicable statute of limitations. The imposition of such taxes could not have been anticipated, in view of the rule enunciated by this Court in *Spector* and *Colonial Pipeline*. Thus, the carriers have had no opportunity or occasion to pass the tax on to the consumer, usually the ultimate bearer of such a sales tax. Moreover, it should be noted that this is a tax on *gross* income—a tax that bears no relationship to net profits, and which, if not passed along to the consumer in one form or the other, might well in many instances exceed the net profit derived from the operations.

Thus, unless reversed, this decision will occasion great harm to Complete Auto and to other carriers. The impact of this decision will be greatly magnified since these companies have conducted their business in reliance on the constitutional rules enunciated in *Spector* and reiterated as recently as last year in *Colonial Pipeline*. A failure to entertain this cause on the merits will create tremendous uncertainty as to the constitutional power of states to place a privilege tax on interstate commerce, and will present carriers with the question whether they should collect such taxes from their customers as insurance against this type of assessment in the future. In essence, the uncertainty that will be occasioned if the case is not determined on its merits may well place a burden on interstate commerce substantially equivalent to the privilege tax itself. The importance and scope of this question requires that this Court entertain this case for a decision on the merits.

CONCLUSION

Probable jurisdiction should be noted and the decision of the Supreme Court of Mississippi summarily reversed.

Respectfully submitted,

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July, 1976

APPENDIX

APPENDIX "A"

IN THE SUPREME COURT OF MISSISSIPPI

NO. 48,590

COMPLETE AUTO TRANSIT, INC.

v.

CHARLES R. BRADY, JR., CHAIRMAN MISSISSIPPI STATE TAX COMMISSION

BEFORE GILLESPIE, ROBERTSON AND LEE

GILLESPIE, CHIEF JUSTICE, FOR THE COURT:

This case involves an assessment for sales taxes imposed upon Complete Auto Transit, Inc., a Michigan corporation (hereinafter Taxpayer). Taxpayer paid the taxes and filed suit in the Chancery Court of Hinds County to recover the sum paid. From a decree upholding the validity of the assessment, Taxpayer appealed to this Court.

Taxpayer is engaged in the business of hauling motor vehicles for General Motors Corporation. It is a certificated contract carrier operating throughout the United States pursuant to authority of the Interstate Commerce Commission. The Mississippi activity of Taxpayer requires the maintenance of a yard adjacent to a railroad at Jackson where an office, together with facilities for servicing Taxpayer's trucks, is maintained. Taxpayer receives approximately 350 automobiles per day from General Motors Corporation with whom it has a contract which is renegotiated from time to time in order to assure Taxpayer a fair return.

The General Motors plant in Georgia assembles automobiles for delivery to dealers in Mississippi and surrounding areas in other states. A sticker is placed on each automobile when it leaves the assembly plant in Georgia showing the dealer to whom it is to be sold. The vehicles are then loaded on railroad cars with a bill of lading showing the consignee as General Motors, in care of Complete Auto Transit. The bill of lading also shows the name of the city to which each automobile is to be delivered but not the name of the dealer to whom it is to be sold. The automobiles are transported to Jackson, Mississippi, by railroad and are unloaded onto Taxpayer's yard adjacent to the railroad. The bill of lading is then stamped "Received by General Motors Corporation, Chevrolet Motor Division, by Complete Auto Transit, Inc." The vehicles are then inspected for damage, and Taxpayer prepares waybills showing the shipper as General Motors Corporation, the description of the automobiles, and the names of the consignees (General Motors dealers in cities other than Jackson). As soon as practical, usually within twenty-four to forty-eight hours, the vehicles are loaded on Taxpayer's trucks and delivered to dealers at various points in and out of the State of Mississippi.

Taxpayer is paid on a contract basis, and ordinarily no bill is rendered by Taxpayer to General Motors Corporation. The entire transportation charge is collected by General Motors from the Dealer who ultimately receives the vehicle. The charges paid by General Motors to Taxpayer for transportation of vehicles from Jackson, Mississippi, to various General Motors dealers within the state are readily separable from charges for transporting vehicles from Jackson beyond the borders of Mississippi. Likewise, the transportation charges paid

the railroad company are in no way connected to the charges paid by General Motors to Taxpayer.

The question is whether the gross income derived by Taxpayer from transporting automobiles from Jackson to other points in the State of Mississippi is taxable by the State.

The statute levying the tax is Mississippi Code Annotated section 27-65-13 (1972), which provides:

> There is hereby levied and assessed, and shall be collected, privilege taxes for the privilege of engaging or continuing in business or doing business within this state to be determined by the application of rates against gross proceeds of sales or gross income or values, as the case may be, as provided in the following sections.

The following sections, referred to in the statute, *supra*, describe the businesses taxed as "truck or any other transportation business for the transportation of property for compensation . . . between points within the state. . . ." The amount of the tax is five percent of the gross income.

The general rule is that a state may tax a local activity affecting or related to interstate commerce if the local activity is sufficiently separate from the out-of-state aspects of interstate commerce. Memphis Natural Gas Co. v. Stone, 335 U.S. 80, 92 L. Ed. 1832, 68 S.Ct. 1475 (1948). However, such a tax is invalid if there exists the danger that it can impose cumulative burdens on interstate commerce not borne by local commerce. General Motors Corp. v. Washington, 377 U.S. 436, 12 L.Ed.2d 430, 84 S.Ct. 1564 (1964). The local activity taxed must be one that does not lend itself to

repeated exactions in other states. Memphis Natural Gas Co. v. Stone, *supra.*

The present case is controlled by cases arising in this State. Interstate Oil Pipe Line Co. v. Stone, 203 Miss. 715, 35 So.2d 73 (Miss. 1948), aff'd. 337 U.S. 662, 93 L.Ed. 1613, 69 S.Ct. 1264 (1949), involved the first leg of an interstate shipment. The tax was levied on the gross receipts from the operation of the oil pipelines wholly within the State. *Interstate* operated pipelines which were used to transport oil from various fields in Mississippi to loading racks adjacent to railroads elsewhere in the State. From the racks, the oil was pumped into railroad tank cars for shipment outside the State. If no tank cars were available, the oil was stored in tanks near the loading racks for short durations until cars were available. When the oil was delivered to *Interstate*, it was accompanied by shipping orders from the the producer or owner directing that the oil be transported to out-of-state destinations. There was no through bill of lading from the point of origin at the fields to the point of destination outside the State. *Interstate* was paid on a per barrel rate, specified in its tariff, for transporting the oil from the gathering point to the loading rack at the railroad. In upholding the validity of the tax, the Supreme Court of the United States said in a plurality opinion that it would not pause to consider whether the business of operating the pipeline was in interstate commerce, for the State had the power to impose the tax involved. The Court said that the tax was not invalidated by the commerce clause of the Federal Constitution merely because it imposed a direct tax on the privilege of engaging in interstate commerce. The Court concluded as follows:

> Since all the activities upon which the tax is imposed are carried on in Mississippi, there is no due process objection to the tax. The tax does not discriminate against interstate commerce in favor of competing intrastate commerce of like character. The nature of the subject of taxation makes apportionment unnecessary; there is no attempt to tax interstate activity carried on outside Mississippi's borders. No other state can repeat the tax. For these reasons the commerce clause does not invalidate this tax. The judgment is affirmed. 337 U.S. at 668, 93 L.Ed. at 1620-21.

A case involving the final leg of an interstate shipment is *McKeigney* v. *Dunn Brothers, Inc.*, 224 Miss. 762, 80 So.2d 802 (1955), suggestion of error overruled, 81 So.2d 712 (1955), appeal dismissed *sub nom. Dunn Brothers, Inc.* v. *Stone*, 350 U.S. 878 (1955). In *Dunn* the tax was levied upon the activities of Dunn Brothers under the following state of facts. Tennessee Gas Transmission Company was engaged in constructing an interstate pipeline which crossed several states, including Mississippi. It purchased pipe for this purpose from California and had it delivered by common carriers to its right-of-way in Mississippi. To accomplish this, it had the railroad company deliver the pipe from the foundry in California to depots or rail heads in Mississippi as near to its right-of-way as was feasible. It engaged Dunn Brothers, a Texas corporation holding a certificate of public convenience and necessity for interstate commerce, to deliver the pipe by motor truck from the depots or rail heads in Mississippi to the rights-of-way of the transmission company. The transmission company, as consignor, shipped the pipe by railroad to itself as consignee to the various depots and rail heads

in Mississippi. Bills of lading were issued accordingly. The transmission company paid the freight, and when the shipments arrived at the rail destination, an agent of the transmission company inspected and accepted the pipe. Dunn Brothers then took charge of the shipment, and with the transmission company as both consignor and consignee, unloaded the car and delivered it to the right-of-way, for which service the transmission company paid Dunn Brothers. Based on *Interstate Oil Pipeline Co.* v. *Stone, supra,* and other decisions of the United States Supreme Court, this Court held that the tax was validly levied.

More recently, this Court upheld a tax on the gross income derived from the operation of a television cable system where a percentage of the signals rebroadcast by the taxpayer were received from outside the State. Rhoden v. Goodling Enterprises, Inc., 295 So.2d 433 (Miss. 1974).

In *Convoy Company* v. *Taylor,* 334 P.2d 772 (Wash. 1959), the Supreme Court of the State of Washington upheld a tax on an activity almost identical to that involved in the present case. In *Convoy,* the proof showed that Ford Motor Company, the shipper in that case, maintained control of the automobiles shipped so as to protect itself if the dealer became bankrupt or failed to pay for the units.

In the present case, General Motors maintains control of the vehicles, at least until they are shipped out by Taxpayer. The automobiles are consigned to General Motors at Jackson and are their property to do with as they see fit until they are ultimately transported by Taxpayer to the purchasing dealer.

It will be noted that Taxpayer has a large operation in this State. It is dependent upon the State for police protection and other State services the same as other citizens. It should pay its fair share of taxes so long, but only so long, as the tax does not discriminate against interstate commerce, and there is no danger of interstate commerce being smothered by cumulative taxes of several states. There is no possibility of any other state duplicating the tax involved in this case.

For the reasons stated, we hold that the tax was valid and the decree of the trial court is affirmed.

AFFIRMED.

PATTERSON, P.J., INZER, P.J., AND SMITH, ROBERTSON, SUGG, WALKER, BROOM AND LEE, JJ., CONCUR.

APPENDIX "B"

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

NO. 89,038

COMPLETE AUTO TRANSIT, INC.
COMPLAINANT
VS.
CHARLES R. BRADY, JR. CHAIRMAN, MISSISSIPPI STATE TAX COMMISSION
DEFENDANT

OPINION OF THE COURT

(Filed August 5, 1974)

The facts in this case are not in dispute. The Court herewith uses the succinct statement of the Defendant as to the statement of facts. The Complainant, Complete Auto Transit, Inc., is a Michigan corporation licensed by the Mississippi Public Service Commission to haul motor vehicles in Mississippi. The Complainant is engaged in the business of hauling motor vehicles for General Motors Corporation. In the case at hand, General Motors Corporation shipped the vehicles via rail from various assembly plants located outside the State of Mississippi to a railroad ramp located in Jackson, Mississippi. At this point the vehicles are placed on a lot awaiting further shipment by the petitioner to various General Motors dealers in the state of Mississippi. The vehicles are shipped under a uniform straight bill of lading prepared by the manufacturer, General Motors Corporation, with General Motors Corporation as consignee, in care of Complete Auto Transit Corporation

at Jackson, Mississippi, for further shipment to the dealers. A separate bill of lading is prepared for the shipment of the vehicles by Complete from General Motors Corporation in Jackson, Mississippi, to the various dealers in the state. It is only the charges for hauling the cars under the bills of lading from General Motors, Jackson, Mississippi, to the various dealers within Mississippi that have been taxed.

The Complainant inspects the vehicles here in Jackson prior to accepting them in order to ascertain if they might have been damaged in transit. After the petitioner accepts the vehicles from General Motors at Jackson, Mississippi, as evidenced by a stamped receipt, they are loaded on the truck equipment and delivered to the various dealers located in Mississippi as shown on the original bill of lading. General Motors ships under two separate hauling contracts, one with the railroad and the other with complainant. General Motors pays both complainant and the railroads, under separate billings.

The State of Mississippi, pursuant to the authority of Sections 10105 and 10109(2) of the Mississippi Code of 1942, levied a sales tax on the gross receipts earned by the complainant from transporting the vehicles from the lot in Jackson, Mississippi, to the various General Motors dealers in the same state. No tax was assessed for transporting the cars from Jackson, Mississippi, to points outside the state. The State Tax Commission assessed the complainant for taxes in the amount of $167,375.03 for the period August 1, 1968, through July 31, 1972.

The Court is impressed with the fact that once the vehicle was delivered to the rail carrier, General Motors had absolutely nothing further to do with the

vehicle. Through rates were established in that both the rail carrier and the truck carrier had on file with the Interstate Commerce Commission the charges that would be made for the portion of the haul performed by each carrier, but joint rates were not in effect, that is, no rates were filed with the Interstate Commerce Commission which would permit General Motors to pay one carrier and have that carrier divide the charges with the other carrier. It was therefore necessary for General Motors to pay to the rail carrier the amount of its charges for the portion of the haul performed by the rail carrier and to pay to the truck carrier the charges for the portion of the haul performed by the truck carrier.

However, this Court feels that it is bound in this cause by the ruling of the Mississippi Supreme Court in *Rhoden* v. *Goodling Enterprises, Inc.*, a Mississippi case of June 4, 1974, 295 So. 2d, 433, which had to do with a cable television system serving the Meridian Naval Air Station in Lauderdale County, Mississippi. The estimate at the time of the trial was that ten to fifteen percent of the signals re-transmitted by the corporation to its subscribers within the State of Mississippi originated outside the State of Mississippi. In reversing the lower court (which had relied primarily on *Fisher's Blend Station, Inc.* v. *Tax Commission of State of Washington*, 297 U.S. 650, 56 S.Ct. 608, 80 L.Ed. 956 (1936)) which found that since part of the signals emanated from out-of-state broadcasting stations, the assessment affected interstate commerce and therefore was improper and uncollectible, the Court said:

> "We acknowledge the interstate character of CATV systems . . ., but nevertheless are of the

> opinion the tax in the present case was not unduly burdensome to interstate commerce and is not constitutionally prohibited.
>
> "The Fishers' Blend case held that a state occupation tax measured by the gross receipts . . . was an unconstitutional burden upon interstate commerce."

The Court went on to say of that decision:

> "The Court pointed out that the interstate commerce involved was not subject to the risk of repeated exactions of the same nature by other states, thus negating the likelihood of cumulative burdens of unconstitutional proportions."

The Court further went on to say that all of the income upon which the tax could be imposed is derived within this state. This is likewise true in the case at Bar, since the Commission did not impose a tax upon any deliveries by the Complainant to points outside the State of Mississippi.

Therefore, the prayer for relief must be denied and Complainant's bill of complaint must be dismissed with all costs being taxed to Complainant.

/s/ James Arden Barnett
Chancellor

APPENDIX "C"

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

NO. 89,038

COMPLETE AUTO TRANSIT, INC., COMPLAINANT

V.

CHARLES R. BRADY, JR., CHAIRMAN, MISSISSIPPI STATE TAX COMMISSION DEFENDANT

DECREE

(Filed August 6, 1974)

This cause having come on for hearing on the 12th day of June, 1974, before the Chancery Court of the First Judicial District of Hinds County, Mississippi, upon a petition filed by Complete Auto Transit, Inc., to declare an assessment of sales tax in the amount of $167,375.03 made by the Mississippi State Tax Commission for the period August 1, 1968, through July 31, 1972, invalid; and this Court, having heard and considered the arguments and evidence presented in the case and having issued a written opinion in the matter, a copy of which is attached hereto and made a part hereof, doth find:

That the prayer for relief asked for by the complainant, Complete Auto Transit, Inc., must be denied, and the bill of complaint must be dismissed with all costs being taxed to the complainant.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the prayer for relief asked for

by the complainant, Complete Auto Transit, Inc., must be denied, and the bill of complaint must be dismissed with all costs being taxed to the complainant.

The petitioner, Complete Auto Transit, Inc., having announced in open court its desire and intention to appeal from this decree and having petitioned in open court for such an appeal, the defendant being present in court at said time, said petition is granted and appeal allowed.

ORDERED AND ADJUDGED, this the 6th day of August, 1974.

Signed James Arden Barnett
Chancellor

Attorneys for Complainant:

Butler, Snow, O'Mara, Stevens & Cannada
Attorneys at Law
Post Office Box 22567
Jackson, Mississippi 39205

By: /s/ Robert C. Cannada

Attorneys for Defendant:

/s/ James H. Haddock

/s/ Joe D. Gallaspy

/s/ Wilson E. Hodge
Post Office Box 960
Jackson, Mississippi 39205

APPENDIX "D"

IN THE SUPREME COURT OF MISSISSIPPI

TUESDAY, APRIL 13, 1976, COURT SITTING

#48,590

COMPLETE AUTO TRANSIT, INC.

VS.

CHARLES R. BRADY, JR., CHAIRMAN
MISSISSIPPI STATE TAX
COMMISSION

This cause having been submitted at a former day of this Term on the record herein from the Chancery Court, First Judicial District of Hinds County and this Court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order, adjudge and decree that the decree of said Chancery Court rendered in this cause on the 6th day of August, 1974—be and the same is hereby affirmed. It is further ordered, adjudged and decreed that the appellant and Fidelity & Deposit Company of Maryland, sureties on the appeal bond herein, do pay all of the costs of this appeal to be taxed for which let proper process issue.

MINUTE BOOK "BR" PAGE 424

I, Mrs. Julia H. Kendrick, Clerk of the Supreme Court of the State of Mississippi, do hereby certify that the foregoing is a true and correct copy of the judgment entered by the Court in the cause therein stated, as the same appears of record on file in my office.

Given under my hand, with the seal of said Court affixed, at office in the City of Jackson, Miss., this the 24th day of June A. D., 1976.

/s/ Julia H. Kendrick
Clerk Supreme Court

APPENDIX "E"

IN THE SUPREME COURT OF MISSISSIPPI

NO. 48,590

COMPLETE AUTO TRANSIT, INC.
APPELLANT
V.
CHARLES R. BRADY, JR., CHAIRMAN
MISSISSIPPI STATE TAX
COMMISSION
APPELLEE

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

(Filed June 9, 1976)

Notice is hereby given that Complete Auto Transit, Inc., the appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of Mississippi affirming the decree upholding the assessment of sales tax, entered in this action on April 13, 1976.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

Robert C. Cannada
D. Carl Black, Jr.
Alan W. Perry
Rhesa H. Barksdale
By: /s/ Robert C. Cannada
Counsel for Appellant

Of Counsel:

Butler, Snow, O'Mara, Stevens & Cannada
Post Office Box 22567
1700 Deposit Guaranty Plaza
Jackson, Mississippi 39205

PROOF OF SERVICE

I, ROBERT C. CANNADA, one of the attorneys for appellant, Complete Auto Transit, Inc., and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 8 day of June, 1976, I served a copy of the foregoing Notice of Appeal on the parties required to be served by mailing a copy of same by United States mail, First-Class postage prepaid, to Mr. James H. Haddock, one of the attorneys for appellee, Charles R. Brady, Jr., Chairman Mississippi State Tax Commission, Post Office Box 1033, Jackson, Mississippi 39205.

/s/ Robert C. Cannada
Attorney for Complete Auto Transit, Inc.

APPENDIX "F"

Section 27-65-19, Miss. Code of 1972, Annotated (recodification of Section 10109, Mississippi Code of 1942)

§ 27-65-19. Public utilities.

(1) Upon every person selling to consumers, electricity, current, power, portable water, steam, coal, natural gas, liquefied petroleum gas or other fuel, there is thereby levied, assessed, and shall be collected, a tax equal to five per cent of the gross income of the business. Provided, however, that there is hereby levied, assessed and shall be collected a tax equal to one per cent of the gross income of the business when the electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel, is sold to or used by a manufacturer, custom processor or public service company for industrial purposes which shall include that used to generate electricity, to operate an electrical distribution or transmission system, to operate pipeline compressor or pumping stations or to operate railroad locomotives.

The one per cent industrial rate provided herein shall also apply when the electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel is sold to a producer or processor for use directly in the production of poultry or poultry products, the processing of milk and milk products, the processing of poultry and livestock feed, and the irrigation of farm crops.

This one per cent rate shall not apply to sales of fuel for automobiles, trucks, truck-tractors, busses, farm tractors or airplanes.

Upon every person operating a telegraph or telephone business for the transmission of messages or conversation between points within this state, there is hereby levied, assessed and shall be collected, a tax equal to five per cent of the gross income of such business, with no deduction or allowance for any part of an intrastate rate charge because of routing across a state line.

(2) Upon every person operating a pipeline, railroad, airplane, bus, truck, or any other transportation business for the transportation of persons or property for compensation or hire between points within this state, there is hereby levied, assessed, and shall be collected, a tax equal to five per cent of the gross income of such business, except persons operating local transit busses shall be exempt from such tax; and upon persons operating taxicabs within municipalities and within four miles thereof, there shall be collected a tax equal to two per cent of the gross income of the business.

"Gross income" shall mean and include the gross receipts derived from the operation of a taxi terminal or cab operating company to include the gross receipts or charges of each and all vehicles operating from or through said central terminal.

Supreme Court, U. S.
FILED
NOV 16 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-29

COMPLETE AUTO TRANSIT, INC.,
Appellant,

vs.

CHARLES R. BRADY, JR., CHAIRMAN, MISSISSIPPI STATE TAX COMMISSION,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JURISDICTIONAL STATEMENT FILED JULY 12, 1976

PROBABLE JURISDICTION NOTED OCTOBER 4, 1976

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Chancery Court Proceedings

4/6/73	Bill of Complaint Filed
6/19/73	Answer Filed
6/12/74	Trial
8/5/74	Chancery Court Opinion Filed
8/6/74	Chancery Court Decree Filed, with Notice of Appeal
8/9/74	Notice to Court Reporter and Designation of Record
8/23/74	Appeal Bond Filed

Mississippi Supreme Court Proceedings

3/3/75	Appellant's Brief Filed
3/24/75	Appellee's Brief Filed
4/11/75	Appellant's Rebuttal Brief Filed
3/17/76	Appeal Argued and Case Submitted
4/13/76	Supreme Court Opinion Filed
4/13/76	Supreme Court Judgment Filed
6/9/76	Filed Notice of Appeal to Supreme Court of the United States

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTDICT OF HINDS COUNTY, MISSISSIPPI

No. 89,038

COMPLETE AUTO TRANSIT, INC.,
Complainant,

vs.

ARNY RHODEN, CHAIRMAN, MISSISSIPPI STATE TAX COMMISSION,
Defendant.

BILL OF COMPLAINT

(Filed April 6, 1973)

Now comes Complete Auto Transit, Inc., and respectfully complaining, shows unto the Court the following:

1.

Complainant, Complete Auto Transit, Inc. (hereinafter referred to as "Complete"), is a corporation chartered under the laws of the State of Michigan. Complete is an established and authorized contract carrier engaged in the transportation of property for hire in interstate commerce, pursuant to permits issued to Complete by the Interstate Commerce Commission.

2.

The defendant, Arny Rhoden, is Chairman of the State Tax Commission of the State of Mississippi, and his official domicile is Jackson, Mississippi.

3.

As hereinafter shown more in detail, complainant has been improperly charged with certain sales taxes that the defendant claims were imposed on complainant's transportation business by the laws of the State of Mississippi. Complainant has been required to pay said taxes, and complainant is entitled to recover the amount so paid together with interest thereon, in this action against the defendant. The Chancery Court of Hinds County is vested with original jurisdiction of this action to recover the taxes improperly collected from complainant by the defendant. The period of time involved in this case is from August 1, 1968 through July 31, 1972.

4.

During the period of time here involved, and at the present time, Section 2 of Chapter 109 of the General Laws of Mississippi, Extraordinary Session of 1955, which was an amendment to the "General Sales Tax Law" of the State of Mississippi, contained, and now contains, the following provision:

> "Section 2. Tax Levied. There is hereby levied and assessed and shall be collected privilege taxes for the privilege of engaging or continuing in business or doing business within this state to be determined by the application of rates against gross proceeds of sales or gross income or values, as the case may be, as provided in the following sections." (Section 10105, Mississippi Code of 1942, as amended)

Likewise, during the period of time here involved, Section 2-d of said Chapter 109 described certain "Public Utilities" upon which the privilege (sales) tax levied by the aforesaid Section 2 was imposed. During the period of time here involved, said Section 2-d appeared as Section 10109, Mississippi Code of 1942, as amended. Among other things, said Section 2-d imposed a privilege (sales) tax upon "every person operating a pipeline, railroad, airplane, bus, truck, *or any other transportation business for the*

transportation of persons or property for compensation or hire between points within this state."

As previously stated, the period of time involved in this case is from August 1, 1968, through July 31, 1972. Throughout this period, the rate of tax imposed by said section was 5% of the gross income of the transportation businesses described in said section.

Effective from and after August 1, 1972, by Section 2 of Chapter 506, Mississippi Laws of 1972, said Section 2-d was amended so as to eliminate the tax on transportation businesses engaged in the transportation of property for compensation or hire between points within this state.

5.

Heretofore, the defendant has taken the position, and the defendant now contends that during the period from August 1, 1968 to and including July 31, 1972, while the aforesaid privilege tax on the transportation of property between points in Mississippi was in effect, the complainant was engaged in the transportation of property within the meaning of said tax statutes, and complainant was subject to the tax imposed thereby. On the other hand, complainant has taken the position and now contends that all of complainant's operations that defendant contends were subject to said tax were operations in interstate commerce, and that such operations were not and are not subject to the privilege tax imposed by the aforesaid statutes. The respective positions of the complainant and of the defendant are based upon the operations of the complainant that are hereinafter described.

6.

(a) The complainant, Complete, is engaged in the transportation of motor vehicles in interstate commerce

as hereinafter described. Complete owns certain tractors and trailers that are utilized in the transportation of such motor vehicles. Complete does not own any real property in the State of Mississippi. Complete has paid all Mississippi State, county, and municipal ad valorem taxes that have been assessed on the property owned by it in Mississippi. Likewise, Complete has duly filed returns and has paid all Mississippi State income taxes and corporate franchise taxes due by it, as such taxes have become due and payable.

(b) Complete is engaged in the business of moving automobiles and other motor vehicles that are shipped by the General Motors Corporation from points outside of Mississippi to points in Mississippi and surrounding states. Typically, each such shipment by the General Motors Corporation includes several individual motor vehicles, and the initial movement of each such shipment is by railroad. Such shipments originate at various assembly plants operated by the General Motors Corporation, and the individual vehicles constituting such shipment are consigned to various General Motors dealers at various destinations in Mississippi and surrounding states. At the time a shipment originates, the ultimate destination of each of the motor vehicles is known, and such destination is shown on the face of the original bill of lading issued by the originating rail carrier. Likewise, the ultimate destination of each vehicle and the name of the particular General Motors dealer to whom each vehicle is consigned are shown on a window sticker attached to each vehicle. The shipments are transported by the railroads under waybills that show the point of origin of each motor vehicle loaded on the railroad cars, together with the identifying number of each motor vehicle and the ultimate destination of each such vehicle at various points in Mississippi and other states.

(c) When a railroad car carrying motor vehicles shipped by General Motors Corporation arrives at Jackson, Mississippi, the cars are unloaded by representatives of the railroad and the vehicles are placed on a lot for reloading by Complete onto trailers, pursuant to shipping instructions previously issued by General Motors Corporation. The motor vehicles are promptly loaded onto trailers by representatives of Complete. and Complete performs that portion of the interstate journey that involves movement of the motor vehicles from a truckaway lot located on the railroad yards in Jackson, Mississippi, to the ultimate destinations of the individual vehicles in Mississippi and surrounding states. That is to say, Complete completes the interstate transportation of the motor vehicles and delivers them to the ultimate consignees (General Motors dealers) at the ultimate points of destination.

(d) The interstate movement of the vehicles is not completed at Jackson, Mississippi, and the vehicles are not accepted at Jackson, Mississippi, either by the shipper or by the particular General Motors dealers who are the consignees of the individual vehicles.

(e) In short, the transportation operation performed by Complete constitutes one leg of an interstate movement of motor vehicles, which is conducted by two or more authorized carriers holding certificates of public convenience and necessity or permits issued by the Interstate Commerce Commission.

7.

In view of the foregoing, complainant avers that its operations that defendant seeks to subject to the Mississippi sales tax are operations that are exclusively and solely in interstate commerce, and such operations are not subject to the privilege tax imposed by the Mississippi

Sales Tax Law. Notwithstanding this fact, the defendant has notified complainant that complainant has been assessed for sales taxes for the period August 1, 1968 through July 31, 1972, based on the aforesaid operations and activities of complainant. By letter dated October 5, 1971, complainant was notified that it had been assessed "for additional sales tax and interest of $122,160.59 for the period August 1, 1968 to July 31, 1971." Annexed to said letter was an "Assessment of Sales Taxes" made by the defendant. True copies of said letter and Assessment are annexed hereto as Exhibits "A" and "B", respectively. Subsequently, representatives of complainant have appealed defendant's assessment to the Board of Review and to the State Tax Commission, as provided by law, and complainant has explained its operations and its position that it is not liable for said taxes. Nevertheless, the defendant has rejected the protests of complainant and has ruled that the complainant is liable for the taxes assessed. Subsequently, by letter dated December 28, 1972, complainant was notified that it had been assessed for "additional sales tax and interest in the amount of $42,990.89 for the period August 1, 1971 through July 31, 1972." Annexed to said letter of December 28, 1972 was an "Assessment of Sales Taxes" by the defendant. True copies of said letter and Assessment are annexed hereto as Exhibits "C" and "D", respectively. By checks dated July 13, 1972 and February 1, 1973, complainant paid to the Mississippi State Tax Commission the sum of $167,-375.38 covering said assessments in full. At the time of such payments, complainant advised representatives of the defendant that these payments were being made under protest and that complainant intended to institute suit for the receovery of such taxes.

8.

For the foregoing reasons, complainant avers that it has been improperly charged with and required to pay the aforesaid sales taxes and interest in the amount of $167,375.38. In accordance with Section 10121.1, Mississippi Code of 1942, complainant is entitled to recover said amount, together with interest, in this action against the defendant Commissioner. Complainant avers that it alone bore the burden of the tax sued for, and it did not, directly or indirectly, collect the tax from its customers, and that complainant is entitled, in justice and good conscience, to the relief sought in this suit. Complainant further avers that it is the real party in interest and that this suit is filed within the time permitted by law.

WHEREFORE, PREMISES CONSIDERED, complainant prays that process may be issued to defendant, requiring him to answer this bill of complaint, but not to answer under oath, as answer under oath is hereby waived. Complainant further prays that upon a final hearing of this cause, complainant recover from the defendant the sum of $167,375.30, together with lawful interest, to be paid in accordance with law. Complainant further prays for general relief.

Complete Auto Transit, Inc.

By: /s/ Walter W. Hansz

(Affidavit omitted in printing)

Exhibit "A"

STATE TAX COMMISSION

(Seal)

Arny Rhoden, Chairman

JACKSON, MISSISSIPPI 39205

Jimmie Walker, Excise Commissioner

Robert A. Biggs, Jr., Ad Valorem Commissioner

October 5, 1971

CERTIFIED MAIL 25-New

Complete Auto Transit, Inc.
5550 Bircher Boulevard
St. Louis, Missouri 63120

Gentlemen:

We have received a report from our Auditor, Mr. Sudduth and Mr. Emerson, which indicates that you owe additional sales tax and interest of $122,160.59 for the period August 1, 1968 to July 31, 1971.

The Commissioner's assessment is enclosed. You are requested to send remittance for the above amount within ten days or show cause why this assessment should not become final. Please give this matter your immediate attention.

Very truly yours,

/s/ H. I. Adcock
H. I. Adcock, Chief
Special Audit Division

/wp
Enclosure

(RECEIVED
Oct 6 - 1971
C.A.T.
St. Louis, Mo.)

Exhibit "B"

[illegible]

[illegible] Jackson, Mississippi

ASSESSMENT OF SALES TAXES

To Complete Auto Transit, Inc., Taxpayer

5550 Bircher Boulevard

of St. Louis, Missouri Greetings:

Acting in accordance with Section 10119, Mississippi Code of 1942, as amended by Chapter 106, Laws of 1955, and pursuant to an audit or other information relating to your records or returns, which discloses that sales taxes are due and unpaid, I the undersigned Commissioner, hereby make the following assessment against you:

Period: August 1 1963 to July 31 1971, inclusive

Corrected Tax Liability	$
Original Tax Paid	111,196.32
Deficiency or Additional Tax Due	10,833.27
Interest	
Damages	
Total Assessment	$ 122,160.59
Part Payment on Assessment	-0-
Balance of Assessment Due	$ 122,160.59

If a check is given in part or full payment of the total assessment and said check is not paid by the bank, then the original assessment remains in full force, and this is notice that the original assessment is due and owing and demand is made therefor.

Pursuant to the further provisions of the statute, payment is demanded within ten days of this date, and if not paid within that time, a Notice of Tax Lien may be filed with the Circuit Clerk of [illegible] County for enrollment as a judgment upon which a warrant or an execution may be issued at any time.

This, the 5 day of October, 1971.

/wp

[illegible]
COMMISSIONER

BEST COPY AVAILABLE

Exhibit "C"

STATE TAX COMMISSION

(Seal)

Arny Rhoden, Chairman

JACKSON, MISSISSIPPI 39205

Robert L. Vaughan, Sr. — Excise Commissioner

Robert A. Biggs, Jr. — Ad Valorem Commissioner

December 28, 1972

CERTIFIED MAIL

Complete Auto Transit, Inc.
5550 Bircher Blvd.
St. Louis, MO 63120

Gentlemen:

We have received a report from our auditor, Mr. Patterson and Mr. Jennings, which indicates that you owe additional sales tax and interest in the amount of $42,990.89 for the period August 1, 1971 to July 31, 1972.

The Commissioner's assessment is enclosed. Pursuant to Section 10121 of the Sales and Use Tax Law, you are requested to forward remittance for the tax assessed or apply in writing for a hearing and correction of the assessment within ten days from this date.

Very truly yours,

/s/ H. I. Adcock
H. I. Adcock, Chairman
Board of Review

HIA:ws
Enclosure

(RECEIVED
Jan 2 - 1973
C.A.T.
St. Louis, Mo.)

Exhibit "D"

State Tax Commission

State of Mississippi

County of Hinds

Account No. _____

Jackson, Mississippi

ASSESSMENT OF SALES TAXES

To Complete Auto Transit, Inc., Taxpayer

5550 Bircher Blvd.

of Stl Louis, Missouri Oklahoma/Mississippi, Greetings:

Acting in accordance with Section 10119, Mississippi Code of 1942, as amended by Chapter 106, Laws of 1955, and pursuant to an audit or other information relating to your records or returns, which discloses that sales taxes are due and unpaid, I the undersigned Commissioner, hereby make the following assessment against you:

Period: August 1 19 71 to July 31 19 72, inclusive

Corrected Tax Liability	$ _____
Original Tax Paid	_____
Deficiency or Additional Tax Due	41,052.57
Interest	1,938.32
Damages	_____
Total Assessment	$ 42,990.89
Part Payment on Assessment	-0-
Balance of Assessment Due	$ 42,990.89

If a check is given in part or full payment of the total assessment and said check is not paid by the bank, then the original assessment remains in full force, and this is notice that the original assessment is due and owing and demand is made therefor.

Pursuant to the further provisions of the statute, payment is demanded within ten days of this date, and if not paid within that time, a Notice of Tax Lien may be filed with the Circuit Clerk of your county for enrollment as a judgment upon which a warrant or an execution may be issued at any time.

This, the 28 day of December, 19 72

/ws

Arny Rhoden
COMMISSIONER

FORM 81100

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT, HINDS COUNTY, MISSISSIPPI

(Title omitted in printing)

ANSWER OF DEFENDANT TO THE ORIGINAL BILL OF COMPLAINT

(Filed June 19, 1973)

COMES NOW the defendant, Arny Rhoden, Chairman, Mississippi State Tax Commission of the State of Mississippi, hereinafter referred to as "defendant," and for answer herein would respectfully show unto the Court:

1.

Defendant has no knowledge nor means of knowledge of the allegations of fact contained in Paragraph 1 of the original Bill of Complaint, and therefore denies same.

2.

Defendant admits the allegations of fact contained in Paragraph 2 of the original Bill of Complaint.

3.

In answer to the allegations of fact contained in Paragraph 3 of the original Bill of Complaint, the defendant denies that complainant has been improperly charged with certain sales taxes that the defendant imposed on complainant's transportation business by the laws of the State of Mississippi. Defendant admits that complainant was required to pay said taxes and defendant denies that complainant is entitled to recover the amount so paid, together with interest thereon, in this action against the defendant. Defendant admits that the Chancery Court of Hinds County is vested with original jurisdiction of this action to seek recovery of the taxes alleged to have been improperly col-

lected from complainant by the defendant. The defendant admits that the period of time involved in this case is from August 1, 1968, through July 31, 1972.

4.

Defendant admits the allegations contained in Paragraph 4 of the original Bill of Complaint.

5.

Defendant admits the allegations contained in Paragraph 5 of the original Bill of Complaint except that the defendant has no knowledge nor means of knowledge of the operations of the complainant that were thereafter described in the original Bill of Complaint, and therefore denies same.

6.

Defendant has no knowledge nor means of knowledge of the allegations of fact contained in Paragraph 6 (a), (b), (c), (d), and (e) of the original Bill of Complaint, and therefore denies same.

7.

Defendant admits the allegations contained in Paragraph 7 of the original Bill of Complaint except that defendant denies that the operations of complainant that defendant subjected to the Mississippi sales tax are operations that are exclusively and solely in interstate commerce and denies that such operations are not subject to the privilege tax imposed by the Mississippi Sales Tax Law.

8.

Defendant denies the allegations contained in Paragraph 8 of the original Bill of Complaint except that defendant admits complainant paid sales taxes and interest

in the amount of $167,375.38 and that the suit is filed within the time permitted by law.

AND NOW, HAVING FULLY ANSWERED, defendant denies that the complainant is entitled to recover from the defendant the sum of $167,375.30, together with lawful interest, or any sum whatsoever, and defendant prays that the original Bill of Complaint herein be dismissed at the costs of complainant.

Respectfully submitted,

/s/ Taylor Carlisle
Taylor Carlisle
Attorney for Defendant
Post Office Box 960
Jackson, Mississippi 39205

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT, HINDS COUNTY, MISSISSIPPI

(Title omitted in printing)

ORDER OF REVIVOR

(Filed May 6, 1974)

THIS case having come on for hearing on motion ore tenus of complaint, Complete Auto Transit, Inc., for revival of this cause in the name of Charles R. Brady, Jr., insofar as the interest of the defendant is concerned, and the Court having considered said motion and being fully advised in the premises is of the opinion, and so finds, that Arny Rhoden, Chairman, Mississippi State Tax Commission, was the original defendant in this cause, and that after the filing of suit but before a trial of this cause had commenced, the said Arny Rhoden ceased oc-

cupying the position of Chairman, Mississippi State Tax Commission. The court further finds that no final judgment has been entered in this cause as of this date. The court further finds that Charles R. Brady, Jr., is the duly qualified and present Chairman of the Mississippi State Tax Commission. The motion has been presented within the time and in the manner prescribed by law so that the movants are entitled to the relief therein sought by virtue of the provisions of Section 11-7-31, Mississippi Code of 1972, Annotated.

IT IS, THEREFORE, ORDERED AND ADJUDGED that this cause be, and it is hereby, revived insofar as the interest of the defendant, Chairman, Mississippi State Tax Commission is concerned in the name of Charles R. Brady, Jr., Chairman, Mississippi State Tax Commission.

IT IS FURTHER ORDERED AND ADJUDGED that this cause may now proceed as "Complete Auto Transit, Inc., v. Charles R. Brady, Jr., Chairman, Mississippi State Tax Commission" bearing No. 89,038 on the docket of this court.

SO ORDERED AND ADJUDGED this the 6th day of May, 1974.

/s/ James Arden Barnett
Chancellor

Agreed to and Approved:

/s/ Robert C. Cannada
Of Counsel for Complainant

/s/ James H. Haddock
Of Counsel for Defendant

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

(Title omitted in printing)

REPORTER'S TRANSCRIPT

(Filed October 18, 1974)

APPEARANCES:

Honorable George H. Butler and *Honorable Robert C. Cannada* of the firm Butler, Snow, O'Mara, Stevens & Cannada, P.O. Box 22567, Jackson, Mississippi, 39205, present and representing Complainant.

Honorable James H. Haddock, Honorable Joe D. Gallaspy and *Honorable Wilson E. Hodge,* Mississippi State Tax Commission, Post Office Box 960, Jackson, Mississippi, present and representing Defendant.

BE IT REMEMBERED that on June 12, 1974, one of the days of the regular June 1974 Term of the Chancery Court aforesaid, the above entitled matter came on for hearing at 9:00 A.M. in Hinds County Chancery Courtroom No. 4, in the Chancery Court Building at Jackson, Mississippi before Honorable James Arden Barnett, Chancellor of the Fifth Chancery Court District of the State of Mississippi, sole presiding, when and where the following proceedings were had and entered of record, to-wit:

By the Court: Mr. Cannada, are you all ready for the Complainant?

[2] By Mr. Cannada: We are ready, Your Honor.

By the Court: Mr. Haddock, are you all ready?

By Mr. Haddock: Yes, Your Honor, we are ready.

By the Court: Would you like to make an opening statement?

By Mr. Cannada: Has the Court read the file?

By the Court: Yes.

By Mr. Cannada: If you think an opening statement will be of assistance, we will make it but since you have read the file and you are thoroughly familiar with it, I don't know that an opening statement would be of any advantage.

By Mr. Haddock: We might just state the issues, if you would like to narrow the thing down. It is up to Mr. Cannada to . . .

By the Court: Any narrowing down of the issues will be appreciated by the Court.

By Mr. Cannada: No, sir. I don't know of any, if the Court please. I don't care about an opening statement.

By Mr. Haddock: Neither do I, except that I thought maybe it [3] would be of assistance to the Court.

By Mr. Cannada: I think we narrowed it in the pleadings.

By the Court: Let's proceed, then. Do you desire that the rule be invoked?

By Mr. Cannada: We don't care for it.

By the Court: All right. Who do you have?

By Mr. Cannada: Before we call a witness, if the Court please, we have by agreement some exhibits that we would like to put in by agreement and stipulation as general exhibits. First, we have a series of documents that I would like to have marked as Exhibit 1-A. B, C, D, etc. Otherwise, it may be a little confusing as they all deal with the same thing. If the Court please, we offer in evidence the documents that have been marked C-1-A through C-1-H which is put in evidence by agreement between the parties as the documentation which is illustrative of the type of documents that were used by the parties in connection with the transportation of these vehicles during the period of time involved in this

litigation. It is understood that witnesses may indicate that some variations of these forms were used from time to time from plant to plant, but that this series of documents is illustrative of the basic documentation used in connection with the shipment of these vehicles. Mr. Haddock, is that stating it as you and I [4] agreed?

By Mr. Haddock: Yes, sir.

By the Court: Let them be marked and entered.

(The documents introduced by stipulation were marked as Exhibit C-1-A through C-1-H and are as follows:)

Exhibit C-1(A)

724—SOUTHERN RAILWAY SYSTEM—724

SOUTHERN — AGS RR — AASC RY — CANW RY — CL RR
CHOATP RY — GSAF RY — SO GA RY — INT RR
LOP&G RR — LA SOU RY — SU RR

THIS MEMORANDUM [illegible] 407-C-3 PARTS

SHIPPER'S NUMBER

STOP THIS CAR	AT	FOR	LENGTH OF CAR ORDERED	LENGTH OF CAR FURNISHED	MISC. PRO. NO.

CAR INITIALS AND NUMBER	TRAILER INITIALS AND NUMBER	CHASSIS INITIALS & NUMBER	PLAN	WAYBILL DATE	WAYBILL NUMBER
BTYI 550930				2/2/71 R 6396 082	70078
CAR TRANSFERRED TO	TRAILER INITIALS AND NUMBER	CHASSIS INITIALS & NUMBER	PLAN	TIME	BY:

TO STATION: JACKSON, MISS. — STATE

FROM NO. AT (6408) ROSELAND, GA. — STATE
NO. (B/A 6396) ATLANTA, GA.

ROUTE: SRS - MERIDIAN, MS

ROUTING SHOW "A" IF AGENT'S SHOW "S" IF SHIPPER'S: RWC 372

FULL NAME OF SHIPPER AND ADDRESS:
G. M. ASSEMBLY DIVISION
GENERAL MOTORS CORPN.
LAKEWOOD PLANT, ATLANTA, GA. 30303

CUSTOMER CODE NO: 474

RECONSIGNED TO — STATE

PER: R. J. JONES, T. M

Subject to Section 7 of Conditions, if the shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement. The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

☐ YES — SIGNATURE OF CONSIGNOR

NOTE: Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper not to exceed [illegible] PER

AUTHORITY

CONSIGNEE AND ADDRESS:
G. M. ASSEMBLY DIVISION
GENERAL MOTORS CORPORATION

CUSTOMER CODE NO: [illegible]

IN CARE OF: COMPLETE AUTO TRANSIT

IF CHARGES ARE TO BE PREPAID, WRITE OR STAMP HERE "TO BE PREPAID" — TO BE PREPAID

DATE REV. W/B PREP.

COMMODITY CODE NUMBER: 37-111-20

FOR THE CARRIER: B. L. WILLIAMS, AGENT PER

NO. PKGS.	DESCRIPTION OF ARTICLES SPECIAL MARKS AND EXCEPTIONS	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
10	MOTOR VEHICLES, PASS., OR FREIGHT COMP., SET UP WITH TOOL KITS			[illegible]		[illegible]

CONSIGNEE	SERIAL NO.	SHIPPER'S NO.
[illegible]	ASK 45.90	
LITTLE ROCK	• 52.50	
POCAHONTAS	• 63.00	
MERIDIAN MISS	• 78.75	602583
BROOKS	• 48.15	
[illegible]	• 54.25	
JACKSONVILLE	• 53.15	602581
GALLATIN CITY →	MISS 53.25	602576
BELZONI	• 21.00	
SILVERTON	[illegible]	

546.85

DESIG. AGENT'S F/B NO.

SHIPPER'S WEIGHT/LOAD AND COUNT

EXHIBIT C-1-A
WITNESS
JUN 12 1974
MARY BURKETT Reporter

Exhibit C-1(B)

724—SOUTHERN RAILWAY SYSTEM—724

SOU RY — AGS RR — AASC RY — CANW RY — CL RR
CHOATP RY — GSAF RY — SO GA RY — INT RR
LOP&G RR — LA SOU RY — SU RR

THIS MEMORANDUM [illegible] 407-C-3 PARTS

SHIPPER'S NUMBER

STOP TO IS	AT	FOR	LENGTH OF CAR ORDERED	LENGTH OF CAR FURNISHED	MISC. PRO. NO.

CAR INITIALS AND NUMBER	TRAILER INITIALS AND NUMBER	CHASSIS INITIALS & NUMBER	PLAN	WAYBILL DATE	WAYBILL NUMBER
BTYI 550930				2-2-71 J 6396 082	70087
CAR TRANSFERRED TO	TRAILER INITIALS AND NUMBER	CHASSIS INITIALS & NUMBER	PLAN	TIME:	BY:

STATION: [illegible], Miss. — STATE

FROM NO. AT (6408) ROSELAND, GA. — STATE
NO. (B/A 6396) ATLANTA, GA.

ROUTE: SRS - Meridian, MS

ROUTING SHOW "A" IF AGENT'S SHOW "S" IF SHIPPER'S:

FULL NAME OF SHIPPER AND ADDRESS:
G. M. ASSEMBLY DIVISION
GENERAL MOTORS CORPN.
LAKEWOOD PLANT, ATLANTA, GA. 30303

CUSTOMER CODE NO: 474

RECONSIGNED TO — STATE

PER: R. J. JONES, T. M

Subject to Section 7 of Conditions, if the shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement. The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

☐ YES — SIGNATURE OF CONSIGNOR

NOTE: Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper not to exceed [illegible] PER

AUTHORITY

CONSIGNEE AND ADDRESS:
G. M. ASSEMBLY DIVISION
GENERAL MOTORS CORPORATION

CUSTOMER CODE NO: [illegible]

IN CARE OF: Complete Auto Transit, Inc.

IF CHARGES ARE TO BE PREPAID, WRITE OR STAMP HERE "TO BE PREPAID" — TO BE PREPAID

DATE REV. W/B PREP.

COMMODITY CODE NUMBER: 37-111-20

FOR THE CARRIER: B. L. WILLIAMS, AGENT PER

NO. PKGS.	DESCRIPTION OF ARTICLES SPECIAL MARKS AND EXCEPTIONS	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
10	MOTOR VEHICLES, PASS., OR FREIGHT COMP., SET UP WITH TOOL KITS			[illegible]		[illegible]

CONSIGNEE	SERIAL NO.	SHIPPER'S NO.
Yale Pontiac	In. 23.65	
Haddon	Miss. 23.65	
Roseville	• 28.00	
Ypsilanti	Ark. 50.75 •	
Orrville	• 54.25 •	
Baker Springs	• 65.65 •	
Nicholas Twp.	• 71.75 •	
Port Angeles	• 46.40 •	
Quincy	• 57.65 •	
Greenville	• 35.00	

457.75

DESIG. AGENT'S F/B NO.

SHIPPER'S WEIGHT/LOAD, AND COUNT

EXHIBIT C-1-B
WITNESS
JUN 12 1974
MARY BURKETT Reporter

BEST COPY AVAILABLE

Exhibit C-1(C)

724—SOUTHERN RAILWAY SYSTEM—724

SOU RY – AGS RR – A&BC RY – CANW RY – CL RR
CNOGTP RY – GS&F RY – SO GA RY – INT RR
LOP&G RR – LA SOU RY – SU RR

THIS MEMORANDUM is an independent object, not a part of bill of lading but issued only to aid the (original) Bill of Lading and a copy or duplicate thereof, the property named herein, said to be transported under the (this) or (said) (seventy days) contract to the (original) Bill of Lading

407-C-3 PARTS

SHIPPERS NUMBER

STOP THIS CAR | AT | FOR | LENGTH OF CAR ORDERED | LENGTH OF CAR FURNISHED | MISC. PRO. NO.

CAR INITIALS AND NUMBER: SP-523595 | TRAILER INITIALS AND NUMBER | CHASSIS INITIALS & NUMBER | PLAN | WAYBILL DATE: 6-11 6396 188 TIME: | WAYBILL NUMBER: 70098 | BY:

CAR TRANSFERRED TO | TRAILER INITIALS AND NUMBER | CHASSIS INITIALS & NUMBER | PLAN

TO STATION: Jackson, Miss. | STATE | ROUTE: SRS - Meridian IC

FROM NO. | STATION: AT (6408) ROSELAND, GA. | STATE

NO.: (B/A 6396) ATLANTA, GA.

ROUTING SHOW "A" IF AGENT'S SHOW "S" IF SHIPPER'S: RWC 372

FULL NAME OF SHIPPER AND ADDRESS: G. M. ASSEMBLY DIVISION GENERAL MOTORS CORPN. LAKEWOOD PLANT, ATLANTA, GA. 30303 | CUSTOMER CODE NO.: 474

R. J. JONES, T. M. PER

RECONSIGNED TO | STATION | STATE

AUTHORITY

CONSIGNEE AND ADDRESS: G. M. ASSEMBLY DIVISION GENERAL MOTORS CORPORATION | CUSTOMER CODE NO.: 38-57

IN CARE OF Complete Auto Transit, Inc.

Subject to Section 7 of Conditions, if the shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement: The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

☐ YES SIGNATURE OF CONSIGNOR

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper not to exceed PER

IF CHARGES ARE TO BE PRE-PAID, WRITE OR STAMP HERE "TO BE PREPAID" TO BE PREPAID

FOR THE CARRIER B. L. WILLIAMS, AGENT PER

DATE REV. W/B PREP | COMMODITY CODE NUMBER: 37-111-20

NO. PKGS.	DESCRIPTION OF ARTICLES SPECIAL MARKS AND EXCEPTIONS	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
10	MOTOR VEHICLES, PASS., OR FREIGHT COMP., SET UP WITH TOOL KITS			[illegible]		[illegible]

CONSIGNEE	SERIAL NO.	SHIPPERS NO.	
Charleston	No. 72.65	CRMALA-610886	
Memphis	Miss. 40.25	"	606636
Detroit	" 21.00	"	606622
E. Lansing Rack	Ark. 52.50	"	606626
Edison	" 40.25	"	606635
Kirkwood	" 34.15	CRMALA-610904	
Conroy	" 59.50	"	606908
	" 59.50	"	606920
Greenville	" 54.25	"	606938
Lansing Rack	" 52.50	CRMALA-606939	
	486.55		

EXHIBIT C-1-C
WITNESS
JUN 12 1974
MARY BURKETT Reporter

DESTN. AGENT'S I/S NO.

SHIPPER'S WEIGHT/LOAD, AND COUNT

6

BEST COPY AVAILABLE

Exhibit C-1(D)

02/01/710

EXHIBIT C-1-D
WITNESS
JUN 12 1974
MARY BURKETT Reporter

BTTX 550628
70078
2/11/71

PLANT

TRUCK

RECEIVED

(This stamp appears on the back side of Exhibit C-1(D).)

RECEIVED
GENERAL MOTORS CORP.
CHEVROLET MOTOR DIVISION
FEB 6 1971
COMPLETE AUTO TRANSIT, INC.
By

Exhibit C-1(E)

COMPLETE AUTO TRANSIT, INC.

POINT OF ORIGIN DESTINATION

BAY NO. B25
LOCATION CODE AND WAYBILL NO. 11 409852

SHIPPER: GENERAL MOTORS CORPORATION

RECEIVED BY COMPLETE AUTO TRANSIT, INC. AT

ATLANTA	CINCINNATI	DORAVILLE	FLINT	ST. LOUIS	WILLOW RUN
DALLAS	JACKSON XX	JACKSONVILLE	MIAMI	SHREVEPORT	TAMPA

CONSIGNED TO
HAWKINS CHEV INC
CALHOUN CITY MISS
17294

DATE RECEIVED AT TERMINAL
2 3
AM PM

EXHIBIT C-1-E

DATE DISPATCHED
AM PM

DRIVER TRACTOR NO. TRAILER NO.

WITNESS

JUN 12 1974

MARY BURKETT Reporter

SERIAL NO.	IDENT. NO.	MILEAGE
CE141 CE10934 Z18	A606576	FEB 26 45
BC		
PRODUCING PLANT	SHIPPING DATE	RAILROAD CAR NO.
ATL	2 1 71	550928

MAGE ADVANCE

153
146
299
828
420
925
573

ROUTE
57-8-9-330-32-7-30-15-

THE UNDERSIGNED HEREBY CERTIFIES THAT THE ABOVE CARS HAVE BEEN THOROUGHLY INSPECTED AND FOUND IN GOOD CONDITION AND CONTAINED ALL TOOLS, MATS, ACCESSORIES AND OTHER EQUIPMENT UNLESS OTHERWISE NOTED BELOW AND

THAT THE ABOVE DESCRIBED SHIPMENT HAS BEEN CHECKED BY ME IN ALL MATTERS PERTAINING TO THE EQUIPMENT INSPECTION AND USE OF EMERGENCY INSPECTION AND USE OF EMERGENCY EQUIPMENT ON ALL POWER UNITS ALSO THAT THE TIME SPENT INSPECTING TRACTOR TRAILER EQUIPMENT HAS BEEN NOTED AND IS IN COMPLIANCE WITH 49 C.F.R. ANY COMPANY RULES OR REGULATIONS WITH REFERENCE TO PREPARATION OF TRIP, LOADING, EQUIPMENT ETC. HAVE BEEN COMPLIED WITH AND ADD MY SIGNATURE CERTIFYING SAME

DRIVER'S SIGNATURE DATE TIME AM PM

TERMINAL OR BRANCH COPY INSPECTOR'S SIGNATURE

REV. 5/67

Exhibit C-1(F)

COMPLETE AUTO TRANSIT, INC.

POINT OF ORIGIN DESTINATION

SHIPPER: GENERAL MOTORS CORPORATION

RECEIVED BY COMPLETE AUTO TRANSIT, INC. AT:

ATLANTA	CINCINNATI	DORAVILLE	FLINT	ST. LOUIS	WILLOW RUN
DALLAS	JACKSON XX	JACKSONVILLE	MIAMI	SHREVEPORT	TAMPA

BAY NO. 32

LOCATION CODE AND WAYBILL NO. 11-409852

CONSIGNED TO
HAWKINS CHEV INC
CALHOUN CITY MISS
17294

DATE RECEIVED AT TERMINAL 2 3 A.M. P.M.

DATE DISPATCHED A.M. P.M.

DRIVER CARPENTER, JOHN 11-9252

TRACTOR NO. 2111716760

TRAILER NO.

MODEL—COLOR	SERIAL NO.		MILEAGE
CE141 CE10954 Z18	A606870	PJ0969	146

EC

PRODUCING PLANT ATL

SHIPPING 2 1 71

RAILROAD CAR NO. 550928

WAGE ADVANCE

ROUTE 2-1-33-32-7-30-15-

THE UNDERSIGNED, BEING DULY AUTHORIZED BY CONSIGNEE, HEREBY CERTIFIES THAT THE ABOVE CARS HAVE BEEN THOROUGHLY INSPECTED AND FOUND IN GOOD CONDITION AND CONTAINED ALL TOOLS, MATS, ACCESSORIES, AND OTHER EQUIPMENT, UNLESS OTHERWISE NOTED BELOW.

EXHIBIT C-1-F

WITNESS

JUN 12 1974

MARY BURKETT Reporter

DEALER Hawkins Chev Inc

DATE RECEIVED 2.6.71

TIME RECEIVED 11:30

CHECK WHICH A.M. ☑ P.M. ☐

ORIGINAL DELIVERY RECEIPT

FORM 51 REV. 5/67 SEE REVERSE SIDE FOR MAILING ADDRESSES

Exhibit C-1(G)

Statement of Charges

Inbound ☒ Outbound

Do Not Include Both On Same Bill

Date Feb. 16, 1971

WITNESS

JUN 12 1974

MARY BURKETT Reporter

Attached Find Bills Listed Hereon Presented For Payment Due On

All Other Carriers — Submit in Duplicate

Must Be Typewritten Do Not Fold

Distribution

GM ASSEMBLY DIVISION
GENERAL MOTORS CORPORATION
LAKEWOOD PLANT
P. O. BOX 4605
ATLANTA, GEORGIA 30302

Atlanta, Ga. Plant
Jackson, Miss. 82-71

Carrier's Name: COMPLETE AUTO TRANSIT, INC.
P. O. BOX 5326 — ST. LOUIS, MISSOURI 63115

Address:

FEB 16 1971

COMPLETE AUTO TRANSIT, Inc.

CO 1654 REV 12-65

Pro Date	Pro Number	Shipper—Inbound Consignee—Outbound	Car Number Or No. Of Pkgs	Weight	Amount Of Bill	Sundry Acct	Sundry Amount	Receiving Slip Or Shipper No.
2-2	25	Atlanta, Ga. Jackson, Miss.	30		1,472.05			

Exhibit C-1(H)

REMITTANCE ADVICE- PREPAID OUTBOUND FREIGHT ON NEW CARS AND TRUCKS

TO: COMPLETE AUTO TRANSIT, INC.
P. O. BOX 5326
CHARLES BRIDGE STATION
ST. LOUIS, MISSOURI

FROM: GM ASSEMBLY DIVISION LAKEWOOD PLANT
P.O. BOX 4605
ATLANTA, GEORGIA 30302 [redacted]

DATE 02-02-71

RTG. CODE	SHIPPERS NUMBER	DATE SHIPPED	WAYBILL NUMBER	CAR NUMBER	AMOUNT
030	10 7-0078	02-02-71	6396-002-70078	BTTX-550928	527.75
030	10 7-0087	02-02-71	6396-102-70087	BTTX-500761	457.75 OK
030	10 7-0098	02-02-71	6396-102-70098	SP-515355	486.55 OK
	30 3 CARDS				1,472.05

EXHIBIT C-1-H
WITNESS

JUN 12 1974

MARY BURKETT Reporter

FEB 16 1971
2612
COMPLETE AUTO TRANSIT, Inc.

[5] By Mr. Cannada: We next want to offer as Exhibit C-2 by agreement between the parties as being a true and correct copy of the certificate of Mr. E. W. Robinson, Executive Secretary of the Mississippi Public Service Commission.

By the Court: Let it be marked and entered.

(The certificate of E. W. Robinson introduced by agreement was marked and entered as Exhibit C-2 and is as follows:)

Exhibit C-2

MISSISSIPPI PUBLIC SERVICE COMMISSION

J. W. SNYDER, CHAIRMAN
EUPORA - THIRD DISTRICT

NORMAN A. JOHNSON, JR., VICE-CHAIRMAN
PHILADELPHIA - FIRST DISTRICT

JOHN L. DALE, COMMISSIONER
LUCEDALE - SECOND DISTRICT

BENNETT E. SMITH
ASSISTANT ATTORNEY GENERAL

E. W. ROBINSON
EXECUTIVE SECRETARY
WALTER SILLERS STATE OFFICE BLDG.
P. O. BOX 1174
JACKSON, MISSISSIPPI 39205

November 2, 1973

DOUGLAS H. BRUMFIELD
CHIEF ACCOUNTANT

G. S. WATROUS, JR.
CHIEF ENGINEER

G. D. ELLIOTT
DIRECTOR OF TRANSPORTATION

KEITH HOWLE
DIRECTOR OF UTILITIES

JOHN MITCHELL
CHIEF LAW ENFORCEMENT OFFICER

STATE OF MISSISSIPPI

COUNTY OF HINDS

I, E.W. Robinson, do hereby certify that I am Executive Secretary of the Mississippi Public Service Commission, and as such I am the legal custodian of the records of said office, and that the attached is a true and correct copy of the Permit and Certificate of Convenience and Necessity issued to Complete Auto Transit, Inc. on May 8, 1940, and entered in docket MC-478 - Permit 334, and recorded in Minute Book No. 14, Page 364, of the Mississippi Public Service Commission Records.

I further certify that this Interstate Permit constitutes the only authority granted to this motor carrier by the Mississippi Public Commission as shown by the official records of the Commission.

WITNESS, My Hand and Official Seal of the Mississippi Public Service Commission on this the 2nd day of November, 1973.

E. W. Robinson
E.W. ROBINSON, EXECUTIVE SECRETARY

EWR:jmr

MISSISSIPPI PUBLIC SERVICE COMMISSION
JACKSON, MISSISSIPPI

MC-473 IN RE: Application for an interstate
Complete Auto Transit, Inc. permit.

ORDER

This matter came on for hearing before this Commission on this date upon application filed by:

Complete Auto Transit, Inc.
517 Cadillac Street
Flint, Michigan

asking for an interstate permit as a contract carrier by motor vehicle for the carrying of property in interstate commerce only in the State of Mississippi.

Upon due consideration of this matter the Commission, in regular meeting duly organized, is now of the opinion that a permit should be granted.

It is therefore ordered by the Commission as follows:

1. That Permit No. ____ issue to Complete Auto Transit, Inc. _____ authorizing the transportation of property in interstate commerce only over the same route or routes in Mississippi, that have been or may be authorized in Mississippi, by the Interstate Commerce Commission upon the filing of an insurance policy, satisfactory to the Commission, in the sum of $5000.00 for the death or injury to any one person; $10,000.00 total public liability for any one accident; property damage $5000.00, in compliance with the Motor Carrier Regulatory Act, Mississippi Laws 1938.

2. A permit to issue by virtue of Motor Carrier Regulatory Act of Mississippi Laws 1938, to

Complete Auto Transit, Inc.

and IT will thereafter be entitled to all privileges and charged with all penalties prescribed by said law, by virtue of said operation as a Contract carrier.

3. And it is further ordered that the Secretary of this Commission shall issue to the applicant

Complete Auto Transit, Inc. a permit

when said applicant shall have complied with all the rules and regulations of this Commission, and requirements of the Motor Carrier Regulatory Act, 1938.

Ordered by the Commission this the 8th day of May, 1940.

D. W. Brown
Secretary

CC:
Applicant-

Application No. ~~MC-473~~

Docket No.

Permit No. 334

Approved May 8, 1940

Issued May 27/40

Permit

Upon consideration of the record in the above numbered application, it is therefore ORDERED: That authority be and it is hereby granted to:

COMPLETE AUTO TRANSIT INC.

Whose principal address is FLT. "ICHIG", 617 Cadillac St.

as a CONTRACT CARRIER OF PROPERTY- INTERSTATE

to transport PROPERTY

In accordance with the Rules and Regulations of the Commission and the "Mississippi Motor Carrier Regulatory Act, 1938," approved April 6, 1938, on and along the route or routes described in Minute Book 14 at page 304 of the minutes of the Mississippi Public Service Commission.

This Permit shall remain in effect until the further Orders of the Commission.

BY ORDER OF THE MISSISSIPPI PUBLIC SERVICE COMMISSION.

Secretary

Chairman

[6] By Mr. Cannada: We would like to call Mr. Frank Sudduth as an adverse witness.

MR. FRANK L. SUDDUTH,

called as an adverse witness by Complainant, having been duly sworn, was examined and testified as follows:

Cross Examination

By Mr. Cannada:

Q. Would you give your name to the reporter? A. Frank L. Sudduth.

Q. For whom do you work, Mr. Sudduth? A. I work for the Mississippi State Tax Commission.

Q. In what capacity do you work for that Commission? A. I work in the Special Audit Division of the Tax Commission.

Q. How long have you been in that work? A. Almost ten years.

Q. In your capacity in the Special Audit Division, what are your primary duties? A. The primary duties of the whole division are to go out of state, out of Mississippi, to make audits for sales, income and franchise and use taxes on foreign corporations.

Q. Have you done that with reference to Complete Auto Transit? A. Yes, I have.

[7] Q. Would you tell us what you did and how you did it? A. The purpose of my visit with Complete was to make a sales tax audit. I first went to Detroit, thinking the audit would be made there. They referred me to the St. Louis office, saying the records I was requesting was in St. Louis. After a brief meeting in Detroit, I left and came back to Jackson and subsequently set up an appointment in St. Louis. Once the appointment was established, I arrived there to make an audit. I went over with the people that I was dealing with, describing

to them what I was there for, and what I wanted. They made available to me the records that I had requested, and I abstracted the information from these records to come down to a taxable base and assessed the tax on that income.

Q. You went there with the idea in mind of assessing this particular tax that is involved in this litigation? A. That is true.

Q. How did you go about determining the amount of that tax, Mr. Sudduth? A. You mean the details of the audit?

Q. Yes, if you would. A. Well, there are two basic sources of information. Let me get my work papers, if I could. The revenue that I was working with was broken down into two different areas. The first area, which accounts for roughly 90 percent of the tax, was related to what they call [8] analysis of shipments which is an IBM listing representing revenue earned in Mississippi. In other words, this is revenue that they had received from the transportation of automobiles from the Jackson Terminal to other locations in Mississippi. This represents also what they call whole shipments to points within Mississippi. These were broken down fairly convenient for my purposes in that they were for Mississippi revenue and they were broken down by months, so all I had to do was pick those up for the period I was to cover.

The other area was a little bit more complicated in that it related to what they call drop shipments. A drop shipment is when—if they have an order say to go to Monroe, Louisiana for say three cars and they also have an order to go to Vicksburg say for two cars, on the shipment that goes to Monroe, they will drop the two cars off at Vicksburg. So the way we arrived at that, they didn't have any complete records for that like they did on the whole shipments with reference to the analysis

of shipments listings, so what we agreed to do was to take four months, March, April, May and June, 1971. We took what they call the waybills, and the other auditor and myself listed all waybills for these four months and came up to a total for Mississippi transportation only, of course. In taking this total, we had picked up the total revenue for the whole shipments and the drop shipments. Once we got this total, we took a percentage of that to the total on the analysis of shipments run which represented [9] whole shipments. We got a percentage there and averaged that percentage of the four months to project over the audit period the amount to be represented as earned from drop shipments. We combined these two together for the total taxable base.

Q. In other words, as I understand it, the issue here involved is vehicles that are being shipped from a General Motors plant somewhere in the United States located out of the State of Mississippi to General Motors dealers located in Mississippi. These are the vehicles with which you are concerned, is that right, the revenue from those vehicles? A. Yes, only to the extent that they come through the Jackson Terminal.

Q. I want to make sure we understand. So that vehicles, for instance, that were shipped by General Motors' plant by this same carrier, Complete Auto Transit, from a plant we will say in Atlanta that was brought directly by truck all the way from Atlanta to a dealer in Mississippi, you would not impose a tax on any portion of that transportation? A. No.

Q. So that was eliminated to start with? A. That is right.

Q. Then a vehicle that was picked up by Complete Auto at the railroad ramp in Jackson and transported into Louisiana or Tennessee or Alabama was not included in your computation? [10] A. No, it was not.

Q. So that what you have included in your computations are vehicles that were picked up by this transportation company at the loading ramp at the railroad here in Jackson and delivered by this Complete Auto Transit to a General Motors dealer in Mississippi? A. That is correct.

Q. And as I understand what you have said that on the vehicles that are used by Complete Auto to transport these new motor vehicles on one load there may be say six or seven cars, and that three of those cars may be destined for a dealer in Mississippi and three of them may be destined for a dealer in Alabama? A. That is correct.

Q. So that it would be the same vehicle and the same driver. He would just on his way to Birmingham, for instance, maybe drop off three cars at a dealer in Meridian and take the other three cars to a dealer in Birmingham? A. That is correct.

Q. So this is the problem that you were having, is that where you had a vehicle that delivered its entire load to dealers in Mississippi, you applied a five percent sales tax to the entire gross receipts from that particular operation? A. That is true. That is the way they had it broken out on their what I have called the analysis of shipments. That is what I had asked for and to the extent of arriving at this portion, we used this.

[11] Q. That is right. I am just trying to make sure that I understand and that we get the Court to understand what we have done. So that essentially you were attempting to determine the total gross receipts of this carrier for all income that it received from shipments that were delivered to it at the railroad ramp here in Jackson and carried by it to dealers located in Mississippi? A. That is correct.

Q. And of course where a whole truckload stopped in Mississippi, that was comparatively simple, but where part of the load was in Mississippi and part was out of Mississippi, this is where you have done the averaging? A. That is correct. You said averaging. We actually used a four month sample to get an average percentage and projected that percentage.

Q. For the three years involved? A. Right.

Q. There were four years involved, were there not? A. Three years. Oh, now are you talking about one audit or two audits?

Q. Two audits. A. Okay.

Q. For purposes of the record, what years are involved in this tax, if any was paid? A. For the first audit, the period covered was from August 1, '68 through July 31, '71. This was the audit that I did. The next audit covered the period [12] 8/1/71 through July 31, '72.

Q. And what was the tax for those particular audits, if you would, Frank, and what was paid, when was it paid? A. The total paid on the first audit was $124,384.49.

Q. When was that paid? A. I don't have the date of payment. It was paid, though. The second audit, the total amounted to $42,990.89, again including interest.

Q. And that was for the fiscal year ending July 31, '72? A. That is correct.

Q. There won't be any more of this? A. I don't think so. As of right now, it won't be.

Q. It is in the pleadings. The whole statute imposing this tax, even on intrastate, was repealed effective July 31, '72, was it not? A. That is correct.

Q. So that even intrastate carriers no longer have to pay this tax? A. That is correct.

Q. In your checking, Mr. Sudduth, did you find that Complete had ever paid this tax in its operations in Mississippi? A. To my knowledge they have not ever paid it, that is correct.

[13] Q. And really, they have been operating here for many, many years, have they not? A. Yes. That is true.

Q. So that what you basically did, you went back for three years and imposed the tax and you didn't go beyond August 1 of '67? A. I didn't go back prior to August 1, '68.

Q. 1968? A. Right.

Q. In other words, you just assessed the tax for three years even though there was no record of them ever having paid this tax? A. That is true.

Q. Then after your audit, the next auditor brought it on up to date to the time that the statute was repealed and made an assessment up to that time? A. Yes, you are correct, since he brought it up until July 31, '72. You are correct.

Q. You brought the tax up until the statute was repealed? A. Yes, that is right.

Q. And this is the money that is in controversy in this case, isn't it? A. That is correct.

Q. This procedure that you have adopted is based upon Complete hauling exclusively from General Motors manufacturing plants or assembly plants somewhere outside the State of Mississippi. It is all General Motors. In your records you saw nothing but General Motors shipments, [14] isn't that correct? A. Yes, that is correct.

Q. You understand, don't you, that the Complete Auto Transit is a carrier certificated by the Interstate Commerce Commission as a contract carrier? A. Yes, that was mentioned to me when I was in Detroit when we had this brief meeting in Detroit. That was mentioned that they had an ICC certificate. That is true.

Q. And that they actually had their rates and charges for each particular vehicle on file with the Interstate Commerce Commission as to what would be charged General Motors for each of these vehicles. Did you realize that? A. No, I wasn't aware of that.

Q. You weren't aware of that when you made the audit? A. No.

Q. That there is a specific charge for transporting each vehicle that has been approved by the Interstate Commerce Commission, but you did not realize that? A. No, I did not.

Q. Now, Mr. Sudduth, in addition to this tax, as a matter of fact isn't it true that this company, Complete Auto, has for many years paid the State of Mississippi an income tax? A. No, they hadn't been filing income tax to the best of my knowledge until I called on them.

Q. Are you mentioning about franchise tax or income tax? [15] A. Income tax and franchise tax. This is to the best of my knowledge.

Q. Well, as a matter of fact, as of today the Complete Auto has paid income taxes to the State of Mississippi, isn't that right? A. Yes, it has.

Q. For the time involved here? A. Yes. They have filed returns covering this period.

Q. And paid tax? A. Correct.

Q. And as a matter of fact, the formula used in determining the income tax to be paid by this carrier involves the factor of the ton miles that are operated by vehicles in the State of Mississippi, isn't that correct? A. I couldn't verify that. I would have to check their returns.

Q. Well, as a matter of fact, this is what the regulations—this is the way you would determine it for a carrier carrying freight? A. Or perhaps on a mileage basis, Mississippi mileage to total mileage.

Q. That is right. Well, it is a mileage basis. In other words, the miles in Mississippi compared with the miles operated systemwide to get your percentage, and then use that percentage and apply that to your net income systemwide? A. That is correct.

[16] Q. And then report that income to the State of Mississippi, so that under the income tax payment that the company has made to the State of Mississippi, they have paid income tax based upon the miles operated in Mississippi, that is correct, isn't it, measured by the receipts from these operations? A. I will have to check the returns to say they did. We have been discussing what would be proper, the method that would be proper for them to report under the law.

Q. All right. This would be the proper method? A. Yes.

Q. And if the tax was paid, presumably that would be the method that was used in determining the income tax? A. That is correct.

Q. And it would be—the factor used there would be the gross receipts or the net income. It is a factor measured by the gross receipts from the Mississippi operations? A. You are talking about income?

Q. Income tax. That is right. A. In other words, the factor that we have been talking about . . .

By Mr. Haddock: Your Honor, may I object to this being brought in? This, as far as we are concerned, I don't think has anything to do with the income tax matter—has anything to do with the sales tax matter, and he is not prepared—he hasn't reviewed this information about their [17] income tax. We will concede that they have paid whatever income tax is required, if that is true.

By the Court: If it is true, the question could be testified to.

By Mr. Cannada: If the Court please, I don't want to burden the record, but I do think it is reasonably important to get, if this witness knows, fine, and if he doesn't . . .

By the Court: What relationship does it have to this case?

By Mr. Cannada: The relationship basically is to show the various taxes that have been paid by this company on this same haul. We think this should be in the record.

By the Court: This isn't a jury case, Mr. Cannada, and I don't think that would have anything to do with whether or not it owed this tax. I sustain the objection. If you want to make a record or state into the record what you intended to prove, you may do that.

By Mr. Cannada: May I put this in the record, then, that if permitted to do so, our purpose in this kind of examination would be to show that this company has paid income taxes to the State of Mississippi during the years involved in this case which income taxes were based upon and in accord with the regulations of the Mississippi State Tax Commission which regulations use as a portion of the formula in [18] determining the tax due the mileage actually operated within the State of Mississippi as compared to the total miles operated by the company, and this percentage is then applied to the net income of the company systemwide to determine the portion of the income that is attributable to the Mississippi operations and on which Mississippi income taxes are paid.

We would also propose to show by this witness that basically the same procedure was followed in determining the amount of franchise taxes due by this company to the State of Mississippi, which taxes have been assessed and have been paid for the same years involved, and that in computing the franchise taxes due and which have been paid, the factor of the gross receipts from the oper-

ations in the State of Mississippi was a factor used in determining the amount to be assessed for franchise taxes against this company, which taxes have been assessed and have been paid for these years.

By the Court: All right. I still sustain the objection.

By Mr. Cannada:

Q. Mr. Sudduth, you understand that it is the position of Complete that this tax is not applicable, the tax involved in this lawsuit is simply not applicable to their operations in toto, the shipments that went all the way in Mississippi or the shipments that went partially in Mississippi and partially in other states; that is correct, isn't it? [19] A. You mean that they came from outside of Mississippi?

Q. Yes. A. You mean enter Mississippi from an outside of Mississippi plant?

Q. No, basically what I am trying to say is that you understand in your talk with Complete and all the way through that their position basically is that they are not liable for this five percent tax on any of their hauling in the State of Mississippi? A. That was their view.

By Mr. Cannada: Yes, sir. I have no further questions.

Direct Examination

By Mr. Haddock:

Q. Mr. Sudduth, just one or two questions here. Under what authority of law or laws did you make this assessment? A. The section in the law is Section 10109 of the Mississippi Code of 1942.

Q. Would you read that section to the Court, please, of the Code? A. This is subparagraph 2 under that section I cited which reads as follows:

> "Upon every person operating a pipeline, railroad, airplane, bus, truck or any other transportation business for the transportation of persons or property for compensation or hire between points within this state,

> there is hereby levied, assessed, and shall be collected a tax equal to five percent of the gross income [20] of such business except persons operating local transit buses shall be exempt from such tax, and upon persons operating taxicabs within municipalities or within four miles thereof, there shall be collected a tax equal to two percent of the gross income of the business."

Q. Now, may I ask you why you made this assessment on Complete Auto Transit Company? A. The purpose in making the assessment was based primarily on the section that I just read to you.

Q. Will you elaborate on that a little bit further as to the actual mechanics of the request for you to make the assessment? A. Well, I was . . .

By Mr. Cannada: If the Court please, I don't know that that has any bearing on the case. I would object to it.

By Mr. Haddock:

Q. We will withdraw the question. What percentage of the amount in question here is involved in the transportation charges from Jackson to dealers within the State of Mississippi? A. You have reference to the drop shipments?

Q. No, sir, I am talking about the straight—the shipments completely—total shipments that were going from Jackson to dealers in Mississippi. A. The total percentage is roughly 92 percent of the total taxable base.

Q. Ninety-two percent of the assessment is for transportation—sales tax for transportation charges from Jackson to Mississippi dealers, exclusively? [21] A. On whole shipments.

Q. On whole shipments? A. That is true.

Q. What percentage would be involved in these drop shipments? A. I have that percentage for the second

audit. The percentage was 7.923 percent. The first audit was 8.828 percent.

By Mr. Haddock: That is all of the questions we have of this witness at this time. We will recall him later.

By Mr. Cannada: We have no further questions.

By the Court:

Q. You may be excused. Let me ask this question. The drop shipments, were they all originated in Jackson, or were you speaking of drop shipments from outside the state?

By the Witness:

A. All the shipments that we are talking about originated from the Jackson terminal insofar as Mississippi is concerned.

By the Court: You may be excused.

(Witness Excused)

By Mr. Cannada: We call Mr. Flanagan.

MR. JOHN FLANAGAN,

the next witness called by Complainant, having been duly [22] sworn, was examined and testified as follows:

Direct Examination

By Mr. Cannada:

Q. Would you give your name to the reporter, please? A. John Flanagan.

Q. For whom do you work, Mr. Flanagan? A. I work for General Motors Corporation.

Q. How long have you worked for that company? A. About fifteen and a half years.

Q. What title do you have with that company? A. I am Manager, Vehicle Transport Distribution Planning.

Q. How long have you held that title? A. Approximately four years.

Q. Mr. Flanagan, what are your duties and were your duties in your capacity with General Motors? Just generally give them to the Court. A. My primary duty is arranging for the transportation of motor vehicles within the U.S., principally between assembly plants and dealerships.

Q. A little louder if you would, please sir. A. Principally between the assembly plants and the dealerships in a prompt, efficient, economical manner.

Q. What does that entail? A. That entails rate negotiations with the railroads and haul-away carriers, entails the establishment of railroad ramp locations in conjunction with railroads [23] where required, and advising the carriers for equipment planning purposes of items to anticipate and of any production changes that will drastically change the methods of transportation that we are using. We have twenty-five assembly plants in the U.S. and three in Canada, all of whom ship to the U.S. dealerships. We have currently fifty-two rail ramp locations throughout the U.S. over which we use a combination of the rail and truck-away transportation.

Q. Now with reference to these particular shipments that are involved here from your various plants outside of Mississippi to your General Motors dealers in Mississippi, what did you do? What was your responsibility in connection with those shipments? A. One of my responsibilities is to advise the assembly plant traffic managers the methods to use to the various dealerships. A good many of the shipments into Mississippi as well as parts of Louisiana, parts of Arkansas, parts of Tennessee, and parts of Alabama would be economical over the Jackson ramp depending upon what assembly plant was shipping.

Q. Let's go back. Basically, did I understand your testimony correctly when you say you told the assembly plants the transportation to be used to get the manufactured vehicles to the dealers? A. That is correct.

Q. And you gave all of the plants that you have listed here, the assembly plants, those instructions as to [24] how to ship the finished motor vehicles to the dealers? A. That is correct.

Q. And you did do that during the entire period of time involved in this litigation with reference to the automobiles that came into Mississippi? A. Yes, for all intents and purposes.

Q. Now in doing this, how did you determine what to tell the various assembly plants as to how to ship these finished vehicles? A. The method we used to tell them?

Q. Yes, and how you went through whether to use truck-away with an explanation, or whether to use rail, or how did you go about it? A. My people are making studies continuously because of changes in the rate structures such as rail rate increases or truck-away rate negotiations that have an impact on the rates that we pay. Therefore, what is the most economical, efficient and prompt manner in which we ship from a plant to a dealership may change from model year to model year. It may change because of production.

Q. Talk a little louder, please, and talk to the judge. A. It may change because of production. It may change for a number of reasons, but basically our studies incorporate how long does it take us to get from this plant to this dealer by various methods. One may be direct truck-away. One may be by the Jackson ramp. One may be by way of the Memphis ramp, for example. In this particular area we have [25] a ramp at Memphis, Tennessee, a railroad ramp that we use at Memphis, Tennessee and Birmingham, Alabama, at New Orleans, Louisiana, and Shreveport, Louisiana as well as the one here in Jackson, Mississippi.

Our instructions when they get to an assembly plant are put in the form of a code on the dealer name and

address file that is maintained at the assembly plant, so that if an order comes from that dealer and is sent to that assembly plant, it is coded in that manner, and when the traffic manager sees that code, he knows he is to ship that by one method or another, that particular code standing for the method we want to use.

Q. Mr. Flanagan, under your dealer-seller agreement with your dealers, where do you send the finished automobiles? Do you send them to a town, or do you send them to the dealer's location, or just where do you send them? A. We send them to the dealer's location.

Q. Was that true at all times during the period of time involved here? A. Yes. This period, that is correct.

Q. Your obligation was to ship the vehicle to the dealer? A. That is correct.

Q. How do you get an order in the first place? A. Well, an order is placed by a dealer during this period of time. I would say it was, using Chevrolet as an example, placed in the mail with the Regional [26] Processing Center which in turn checks that order to make certain that it is a buildable order. For example, they haven't order two engines for a vehicle or what have you. Then it is passed on to Detroit and at that point sent to the assembly plant. At Detroit they are checked for tie-in to inbound materials to that plant so that that vehicle can be produced. Then it is sent to the plant and it is exploded into a production language, you might say.

Q. My question basically is this. Is the—are the automobiles just manufactured and placed on the lots, or are they manufactured basically pursuant to an order from the dealer? A. They are manufactured on dealer orders.

Q. On dealer orders? A. That is correct.

Q. So from the time the automobile begins being assembled, it is assembled for a particular dealer? A. That is correct.

Q. So that by the time it is finished, do you know where that automobile is to be sent? A. Yes, we do.

Q. Where? A. To the dealer's location.

Q. And under your dealer arrangement, the transportation is to be sent, as I understood you, to the dealer's location in a particular city? A. That is correct.

Q. And as I understand your testimony, it is [27] your responsibility to get it from the assembly plant to the dealers? A. Yes, sir.

Q. To determine how it gets there? A. Yes, sir.

Q. Are there any assembly plants located in Mississippi? A. No, there are not.

Q. So that the original transportation of the automobiles begins from outside of the State of Mississippi? A. That is correct.

Q. In working out your transportation, I understood you to say that in some instances the new vehicles are all taken by truck. Why is that true, taken the whole distance by truck? A. Number 1, it is usually a prompter service than when we become involved with rail transportation.

Q. A little louder, please. A. When we become involved with rail transportation, it is longer. Number 2, essentially we have to deliver all vehicles ultimately to the dealerships by highway transportation because of the mere fact that dealerships are not located on rail sidings. The economics, of course, of shipping 50 miles from a plant to a dealership by truck-away is obvious. We wouldn't want to become involved in rail transportation. However, there are a number of plants shipping nationwide our products. We have had quite a proliferation of products over the years. We are no longer in an era where we have an [28] assembly plant in a nice, little neat area of the country to which he serves. We have many shipping nationwide. Because of this, rail

transportation over the long haul is more economical. Railroads in the late 50's, their percentage of the total transportation of General Motors finished products was below 20 percent by volume, and in order to become more competitive, they did offer at that time—I mean at that time we would be loading four vehicles into a rail car and this was relatively expensive on a per vehicle basis. The railroads did come up with a so-called multi-level rail car which is the series of two or three levels, one above another. I am sure you all have seen one around, probably, which enabled us to negotiate rates based on shipping anywhere from eight to at that time fifteen units. This did bring down the cost to us on a per vehicle basis over a long haul.

These railroads recognized that we had to make deliveries to our dealerships; therefore, they established what we refer to as railroad ramps which is an interchange between the railroad who solicited the business and a beyond carrier, a truck-away carrier. In all instances we did arrange for the—or select the truck-away carrier we desired at the ramp interchange. From then on, the railroad participation increased substantially.

Q. Now as I understand your testimony, you in arranging the transportation for economic reasons, in some instances you would arrange it by trucks all the way from the assembly plant to the dealer? [29] A. Yes, that is correct.

Q. Where the distance was economically to a disadvantage, you would arrange it by rail to the general area of the dealer and then by truck the rest of the way to the dealers? A. That is correct.

Q. And you designated either common carrier or a certificated carrier to pick it up from the railroad and carry it on to the dealer? A. That is correct.

Q. Now in working out your arrangements to complete the transportation to the dealer, do you have contracts with certificated carriers that are certificated by the Interstate Commerce Commission? A. Yes, we do. We use contract carriers and common carriers. In the case of the contract carrier, there are agreements, contracts. They are on file with the Interstate Commerce Commission.

Q. I understand that you did make arrangements with certificated carriers to complete the haul. Would you tell the Court what kind of carriers you made arrangements with? Were they all common carriers? A. No, they were not, both common and contract carriers.

Q. By common carrier you mean railroads or trucks that have certificates to operate over certain routes and they are, of course, available to anybody that wants to use them? A. Yes, that is correct.

[30] Q. And so that you have available to you all the railroads and the common carriers that serve the area of a particular assembly plant? A. Yes, sir.

Q. Did you also enter into arrangements with contract carriers? A. Yes, we did.

Q. How many would you say basically, roughly, have you entered into with different carriers? A. Currently we have three contract carriers.

Q. Do they serve wide areas? A. Yes. Our two largest highway carriers are contract carriers, Complete being one of them.

Q. Did you have a contract with complete Auto Transit? A. Yes, sir.

Q. Would you explain to the Court how the contract carrier functions and what kind of arrangements and contracts you have with them? A. The contract carrier functions in a similar nature to a common highway carrier in that he transports the vehicles from—at either an intermediate point from the assembly plant to the dealer or

directly from the assembly plant to the dealer. A contract that we enter into with him—in this case was dated back in 1942, the original contract, since amended in accordance with the provisions of the contract. We find the contract carrier to be a more devoted carrier if he is a contract carrier. There are pluses or minuses on either [31] side as far as contract versus common, but historically several of our divisions have used contract carriers and we have not put either one of them out of business because of a preference of one over the other.

Q. As I understand it, you negotiate a contract with Complete, as an illustration, for services in transporting vehicles from assembly plants or anywhere else that you want them to take possession and from that point to a dealer, is that correct? A. Yes.

Q. So you enter into such a contract. Is that then submitted to and approved by the Interstate Commerce Commission? A. That is, yes.

Q. Is the contract carrier then issued a permit or certificate to engage in these operations called contract carrier operations? A. Yes, he is.

Q. Do they then file with the Interstate Commerce Commission a schedule of the charges which is called a tariff that they will—that you will pay to them for these services? A. That is correct.

Q. Was that done by Complete? A. Yes, it was.

Q. Was that done at all times while this operation here involved was in effect? A. Yes.

[32] Q. And the rates basically were based upon each vehicle, the size of the vehicle, and the miles that it was transported, and that gave you the total that you would pay to Complete for transporting this vehicle? A. Yes, that is correct.

Q. That was true all during the term of the four years involved in this tax case? A. Yes, sir.

Q. Did you have a similar arrangement with other contract carriers? A. Yes, we do have. For example with Complete, Complete serves six of our assembly plants, and I would say five of the rail ramp locations, one of which is located here in Jackson, Mississippi. Another large carrier would be Anchor Motor Freight, a large contract carrier that handles principally traffic or vehicles, motor vehicles originating at our eastern plants and many of the railroad ramps in the East. On the West, we have Pacific Motor Trucking as another contract carrier handling the vast majority of our vehicles within California from our three plants in California.

Q. In all of these instances the procedure followed is essentially as you have followed it with Complete in getting it from the assembly plant to the dealer? A. Yes, that is correct.

Q. Using in some instances a combination of rail part of the way and then the contract carrier the rest of the way, or in some instances the contract carrier the entire journey? A. That is correct, yes.

[33] Q. If you would, Mr. Flanagan, explain to the Court exactly what is done insofar as General Motors is concerned and the procedure you expect the carriers to do from the time this vehicle which I understand has been ordered by a particular dealer? A. Yes.

Q. From the time it leaves the assembly plant. A. On a movement, for example, over Jackson, Mississippi ramp?

Q. Yes, to the Jackson ramp. A. The cars—I shouldn't say cars—the motor vehicles are produced. If they are passenger vehicles or station wagons, a so-called price label is affixed to the window stating the destination of the vehicle to be delivered to a specific dealer. The paper work does vary somewhat from plant to plant, but the paper work basically is arranging an

agreement with the railroad to transport 12 or 15, whatever we can load on a rail car, from the plant to Jackson, Mississippi, and information is given to Complete Auto Transit who is our route at Jackson, Mississippi that these cars are coming and to prepare themselves to move them in an expeditious manner under our contract to the dealers.

Q. Mr. Flanagan, I hand you a document. See if you recognize what that is? A. This is a dealer copy of the price label. It would accompany the car in the glove compartment.

Q. Is that typical of the type of thing that you testified is affixed to the window of all automobiles when they leave the assembly plant? [34] A. Yes.

Q. This isn't involving time here, but this is the type thing that is affixed? A. Stipulated by federal law.

Q. This must be affixed on every car? A. Yes.

Q. And it is affixed on every automobile when it leaves the assembly plant? A. Every passenger automobile, yes.

By Mr. Cannada: We would like to offer this as an exhibit to his testimony.

By the Court: Let it be marked and entered.

(The document introduced by Complainant on direct examination of the witness Flanagan was marked and received in evidence as Exhibit C-3 and is as follows:)

Exhibit C-3

CAR LABEL

Dealer Copy

BLACKWELL CHEVROLET
JACKSON, MS 39206 -039

X789 Dealer Order No

1N47 4 1C5x ST. LOUIS, MI CUR1

4,117.90

1BN47 CAPRICE CLASSIC - V8

1 SOFT-RAY TINTED GLASS	49.00
7 DOOR EDGE GUARDS	6.00
2 COLOR-KEYED FLOOR MATS	12.00
0 FOUR-SEASON AIR CONDITIONING	405.00
3 REMOTE CONTROL REARVIEW MIRROR-L	12.00
6 TURBO-FIRE 400-2 BBL. V-8 ENGINE	.00
2 COMFORTILT STEERING WHEEL	44.00
1 G78X15/B BELTED W/STRIP TIRES	32.00
1 AM RADIO	65.00
2 REAR SEAT SPEAKER	15.00
1 LIGHT NEUTRAL VINYL TRIM	18.00
T VINYL ROOF COVER - CREAM-BEIGE	86.00
L GOLDEN BROWN METALLIC	.00

5

5057

764.00

1,181.90

5,347.90

BEST COPY AVAILABLE

[35] By Mr. Cannada:

Q. Mr. Flanagan, with reference to C-3 which is an illustration, there is affixed to the window or windshield of every automobile a document similar to this. This one shows Blackwell Chevrolet Company, Jackson, Mississippi. Is that the name of the dealer? A. Yes.

Q. Is the name of the dealer always shown and his address on this car label that goes on the car? A. Yes.

Q. It has some figures here 2RX789. What does that mean? A. That is the dealer order number.

Q. In other words, you had gotten an order from Blackwell for this particular motor vehicle and you manufactured it pursuant to that order and this is filling that order, is that correct? A. Yes.

Q. Keep that, if you would. Then what is that next number down there, IN47R etc.? A. IBN47?

Q. Yes. A. That is the model number.

Q. Or serial number? A. No, it looks to me to be a model number of the vehicle. The ident. number is not shown.

Q. What is the IBN47? A. That describes the type of vehicle, the year 4 being '74 model year. The 1 represents Chevrolet Division. [36] The B represents a B body type vehicle of which the Caprice Classic is the top of that particular line. The N and the 7 I am just not certain of that.

Q. Essentially what you have testified to is that every automobile, pursuant to federal law, when it leaves the assembly plant has the dealer as the destination from the time it leaves the plant of the automobile? A. Yes.

Q. Information similar to this? A. Yes.

Q. I believe you testified on commercial vehicles the law did not require that? A. That is correct.

Q. What do you do about commercial vehicles? A. Usually, I would say a form similar to that, most often

called a car sticker, which describes the destination or the dealer location and the dealer's name is placed in the glove compartment of such vehicles, and it is very similar in nature to that which we have just reviewed there.

Q. So that there is an identification on each vehicle from the time it leaves the plant as to where it is to be ultimately received at the dealer? A. Yes.

Q. And that is true from the time it leaves the assembly plant as to every vehicle? A. Yes.

Q. Now, the motor vehicle has left the assembly plant with the sticker on it or with the sticker in the glove [37] compartment if it is a commercial vehicle, showing the dealer destination in Jackson, Mississippi. What does General Motors do at that point in time? A. We advise—in this case it would be Complete Auto Transit—the assembly plants advise them. During the period in question, that advice would be either—advance notice would be either by mail or sometimes by wire at other facilities so that they could prepare themselves to handle these vehicles, make them up into loads for the balance of the transportation cycle there.

Q. On the example that we have put in for illustrative purposes by agreement, a shipment that was destined for the dealer in Calhoun City that went partially by rail to the rail ramp at Jackson, Mississippi and then by Complete, I hand you a document that has been marked as Exhibit C-1-A. Is that illustrative of the type of document that would be prepared at the time that you deliver the vehicle to the railroad commonly called a waybill? A. Yes, it would.

Q. Is this typical of the type of thing that is prepared at that time? A. Yes.

Q. I see with reference to this particular exhibit that it shows the consignee down at the bottom as being the

towns. Does it ever actually show the actual dealer itself? A. Some do at some plants, yes.

Q. Are different forms used to accomplish the purposes here by different plants? A. Yes, they are. Basically I would say in all [38] instances the responsibility of the plant traffic manager is to have shipping documents in the hands of the highway carriers serving the railroad ramps we are using at the time the rail car arrives at that point.

Q. As you would visualize these documents and pursuant to your instructions, what would be your basic instructions to the traffic department of an assembly plant as to how to get this vehicle from the plant in Georgia to the dealer in Calhoun City? A. Our instructions to a plant would be to use the Jackson ramp, and we would give him the railroads from that particular ramp to the IC Railroad connection, using IC Railroad into Jackson and Complete Auto Transit to Calhoun City. This would be in the form of a two digit alpha code which is what we use now. We used numerics in the past. JT happens to be Jackson. Complete Auto Transit beyond. If you were to go to assembly plants throughout the country, you may see placards that are put into the windows of cars as they come off the line, indicating take it to the point to which we are making loads for, JT or Jackson, Mississippi, and Complete Auto Transit serving that point.

Q. So that your instructions would be this railway, and you would designate the railroad, would you not? A. Yes.

Q. You designate the railroad, one, two, or maybe three different railroads, in order to get it to the ramp in Jackson? A. That is correct.

[39] Q. And then you would designate Complete Auto to complete the transit? A. Yes. That would be our instructions to the assembly plants.

Q. As I understand your testimony, when the vehicle is delivered to the railroad, that your traffic people then immediately notify Complete concerning the vehicle that is on its way? A. Yes. The main points that they have to make the truck-away carrier or highway carrier serving the ramp know, that is, the unit involved, the destination or the dealer location and the rail car in which that particular unit was placed so that the carrier would know what units were on what rail cars so that he could prepare himself to make up his loads from the ramp site.

Q. Mr. Flanagan, I show you what has been marked as Exhibit C-1-D and I will ask you if that is illustrative of the type information that the traffic department would send to Complete? A. Yes. The majority of our plants are using this to convey the information that we have stipulated they must obey.

Q. Does that show the actual name and location of the dealer? A. Yes, it does.

Q. It identifies the car? A. Yes, it does.

Q. Identifies the rail car that it is coming in on? [40] A. Yes, and the date shipped from the . . .

Q. And you get this information to Complete as soon as you can after you once deliver it to the railroad? A. That is correct.

Q. This exhibit also, I believe, has considerable information about the car itself as to the attachments and how it was manufactured? A. Yes, it has a variety of uses, that particular form. Its primary design is to explode a dealer order at the plant into production language; therefore, you see a lot of symbols and codes indicating the different options and things of this nature to be placed on that car in accordance with the dealer order.

Q. All right, now. This information is sent to Complete. As I understand it, you already have a contract with Complete to transport any vehicles tendered to it, that is correct, isn't it? A. This is correct.

Q. And of course the common Carrier, the railroad, must take vehicles that are tendered to them for transportation? A. Yes, in accordance with their tariffs.

Q. And the transportation of Complete insofar as charges are concerned or tariffs, they charge in accordance with the tariffs they have on file? A. That is right.

Q. So that you have here a common carrier, an Interstate Commerce Commission common carrier with tariffs on [41] file and you have here an Interstate Commerce Commission contract carrier with tariffs on file as connecting carriers to complete this transportation? A. Yes.

Q. Is that correct? A. Yes. This puts us at the central office as well as the traffic managers in the field in a position to know what the total transportation cost is going to be to move that vehicle from the assembly plant to the dealer location.

Q. And at the time that you deliver this vehicle to the railroad, who are they instructed to deliver the vehicle to? A. They are instructed to deliver it to Complete Auto Transit as in the case of Jackson.

Q. In other words, in all shipments during the period of time here involved, that came to the ramp in Jackson, Mississippi, they were instructed to make all deliveries of vehicles directly to Complete Auto Transit? A. Yes, very definitely.

Q. So that from this point on then where you have delivered it to the railroad, you have your contractual relations with both parties, both carriers; you have delivered to the first carrier. The destination is your dealer at Calhoun City, Mississippi or any other dealer. What, if anything, does General Motors have to do with that shipment from that point on? A. Well, we hope we don't have anything to do, [42] unless the dealer reports some weeks later that he has not received his car. During this particular point in time, we weren't getting the reports

current, but we were relinquishing the care, custody and control of the vehicle and expected the carriers involved to perform their services in accordance with either the contracts or the tariffs that are on file so that the unit will be delivered within a reasonable time.

Q. So that insofar as General Motors is concerned, it has turned it over to certificated carriers for delivery to the dealer? A. That is correct.

Q. And you expect the traffic department and others to do such documentation as is necessary to get it to that destination? A. Yes.

Q. Is this generally done, Mr. Flanagan, throughout the nation? Is this a little operation or a big operation? A. The operation in Jackson, Mississippi is one of our, from a General Motors standpoint, one of our larger ones. I think volume-wise, it ranked 8th as far as the number of units put into a railhead for delivery to dealers within that railhead area. 90,000, I think, is a pretty steady figure for the last few years, per year, which on a working day we are talking about maybe 300 or 350, which have to be moved by the carrier through this facility in an expeditious manner, or you would have them locked up and they [43] would be using Penney's parking lot perhaps, if we didn't keep that flow moving through there.

Q. So that basically this is a transportation system of getting it from the plant to the dealer and it operates in a big way and General Motors has nothing to do with the care, custody or control of that vehicle from the time you deliver it to the railroad until the time it is delivered to the dealer, is that correct? A. That is correct. We expect the carriers involved to make delivery in accordance with the provisions of their tariffs and contracts. It is part of an overall cycle which ourselves as well as our competitors in the industry are interested in minimizing the time from the dealer order or customer order as the

case may be, dealer order to the time the unit is delivered. These are basically increments that involved the placement, the time the order is placed with the particular division, the time it reaches the assembly plant, the time it takes to assemble the vehicle, the time it takes to deliver that vehicle to the dealership. We are always striving to reduce that time in order to better serve our dealers.

Q. Mr. Flanagan, after the motor vehicle is turned over by the railroad to Complete, do you know what Complete does in the form of paper work other than just deliver it to the dealer? Do they send in and get paid? Do you know how they get paid? A. As I mentioned before, the assembly plant that is shipping the vehicles by rail carload, thence truck-away over Jackson, as is the case in all ramps, they know and have [44] on this dealer name and address file the amount of moneys that are in the Complete Auto Transit contracts from Jackson to that particular dealer location. This is accumulated at the time that our financial department at the assembly plant is notified that these units went to Jackson, Mississippi, these twelve, and they are all to be delivered by Complete Auto Transit. So those moneys are accumulated, and the carrier is virtually notified at the same time and paid very quickly the amounts due him, what we may call prepayment of the freight charge.

Q. So that it is conceivable that you would actually have paid Complete for a haul from Jackson to other locations even before they actually make the haul? A. It is possible. We are mechanized as much as possible to eliminate the manual effort involved in shipping virtually 25,000 vehicles a day to 13,500 U.S. dealerships of which 203 are in the State of Mississippi.

Q. So that Complete, as your other dealers would, in their regular cycling based on the information they received from you concerning the ultimate destination

of these vehicles that they were receiving from the railroad, would set up their billing procedures, etc. as well as their transporting procedures and bill it, do the paper work on the assumption that everything came in like it was supposed to? A. Yes.

Q. Mr. Flanagan, back when you finished the vehicle and put it on the railroad, when do you bill the dealer? A. The dealer is invoiced at that particular time [45] by the plant, that particular time being the time that it is being shipped from the assembly plant. There are certain allowances so far as free interest periods are concerned, a part of which is the anticipated transit time that it will take that vehicle to move from that particular assembly plant to that particular dealership. This varies with each and every assembly plant in its relationship to the dealerships.

Q. You mean the time varies? A. The time, yes. We don't, for example, charge the dealer interest for the time that the vehicle is in transit to him and for a stipulated time thereafter. One of our important functions, of course, is to reduce that time so that we won't have this money, this high inventory outstanding on our books. So the stress is constantly on keeping the vehicles moving in the most expeditious manner that we possibly can.

Q. My basic question here is, when you do deliver this to the railroad, at that moment you bill and mail to the dealer the bill for the purchase price of the vehicle? A. Yes.

Q. And the fact that he hasn't actually gotten it, it is still in transit to him, means that you don't charge him interest for the period that you estimate it takes to get the vehicle there? A. That is correct.

Q. And insofar as the charges are concerned for the freight charges, you have turned it over to the railroad

and you have, of course, a contract with Complete. They send you their statements. You pay them, and then you charge it back [46] to the dealer, a destination charge or freight charge to basically reimburse you for those expenses? A. Yes.

By Mr. Cannada: If the Court please, could we have a ten minute recess and let me see if there are any questions before we dismiss this witness? I think we are through.

By the Court: All right. (A short recess was taken, after which proceedings were resumed.)

By Mr. Cannada:

Q. Mr. Flanagan, when we took the recess, you were testifying concerning your desire to expedite this shipment from the assembly plant to the dealer. As far as General Motors is concerned, how do you consider the shipment or transportation from the beginning point or the assembly and the delivery point to the dealer? A. We consider in all cases . . .

Q. A little louder, please. A. We consider it in all cases a continuous movement from the assembly point to dealer location, be it in Alaska or be it in the States, the continental states here.

Q. Do you do that through certificated carriers by the Interstate Commerce Commission? A. Yes, we do.

Q. All the carriers that you use are carriers that have certificates from the Interstate Commerce Commission? A. Yes. Part of our job is to make certain that [47] we are satisfied or assured that they have proper certification.

Q. And it is your understanding that the rail shipper just turns it over to the trucker shipper to get it to the ultimate destination, the dealer? A. Yes.

Q. The carrier, the rail carrier turns it over to the trucking carrier for ultimate delivery to the dealer? A. Like in the case here of Jackson, yes.

Q. That is the way you have designed it from a General Motors standpoint? A. Correct.

By Mr. Cannada: No further questions.

Cross Examination

By Mr. Haddock:

Q. Mr. Flanagan, you stated that you, I believe I heard you say, that you conducted rate negotiations with the railroads? Are those rates negotiable? A. Yes, they are negotiable.

Q. Do you also negotiate the rates with Complete Auto Transit? A. Yes, sir.

Q. This storage yard located here in Jackson where the cars are removed from the railroad and placed on the yard, to whom does that belong? A. That is railroad custody. These are yards that they had to make available in order to have orderly transition from them to the beyond carrier.

[48] Q. Do you pay any fee for the storage of vehicles on those yards? A. No, only under certain circumstances and on certain types of vehicles. This is in our export operation where we have made arrangements with the railroad at a ramp location to store export units until their ships come in. Not on domestic traffic, though. By domestic I mean to U.S. dealerships.

Q. I would like to refer you to the exhibit marked "Car Label." I don't know what the exhibit number is. That is pasted on the vehicle identifying this vehicle. The dealer's name is Blackwell Chevrolet in Jackson, Mississippi? A. Yes, sir.

Q. Could you tell me exactly how this car is gotten to Blackwell from the rail car? A. From the rail car?

Q. Yes. A. It is unloaded by the railroad in accordance with the provisions of their tariff which includes the unloading, and then interchanged with Complete Auto

Transit in accordance with our instructions for delivery by Complete Auto Transit.

Q. Complete Auto Transit picks it up there. Even though it is here in Jackson, they pick it up and take it to Blackwell? A. Yes, that is correct.

Q. Let's kind of run down to get in mind exactly [49] how this operation works, the Plaintiff in this case, Complete Auto Transit, I believe is a corporation qualified to do business in the State of Mississippi; that they are hauling cars from Jackson to the dealers located in Mississippi and surrounding states, is that correct? A. That is correct, as well as hauling on a direct basis from certain of our relatively nearby plants.

Q. General Motors Corporation maintains an assembly plant in this instance in Atlanta, Georgia as an example, and they supply cars from this assembly plant to dealers in the southern states including Mississippi and surrounding states, is that correct? A. Yes, certain cars are assembled at that location. They basically are serving the southeastern states.

Q. When a dealer in Mississippi orders a car, they submit an order through a General Motors sales representative who gathers these orders for transmission to the proper plants, is that right? A. That is correct. In instances that is correct, yes.

Q. And these orders designate the models, the serial, the models, the colors, etc. that the dealer desires? A. That is correct.

Q. And these orders are assembled in a sales office and forwarded to the proper place for further action? A. That is correct.

Q. As soon as the body in the assembly plant is placed on the chassis, a sticker or whatever you call the [50] identifying instrument is placed on the windshield or in the car to identify that order and the car, is that

correct? A. Yes, sir. That could be at the end of the line if we are referring to the price label.

Q. Then upon completion of that unit, the unit is then shipped to the dealer who ordered that particular vehicle? A. That is correct.

Q. All right, sir. Now, to get down to the actual operation of General Motors or a General Motors Division, to whom the order has been submitted, as to the mechanics of the operation, the automobiles are loaded on a railroad car in this particular instance for delivery or for transportation to the Jackson, Mississippi ramp. A. Well, they are loaded for transportation to the dealer and an interchange is made at Jackson, Mississippi ramp, yes.

Q. All right, sir. At that time when they are loaded on the railroad car, an instrument is prepared which is marked Exhibit A, I think, and I will hand you a copy of it that I would like to refer to.

By the Court: Let's use the original exhibit.

By Mr. Haddock:

Q. It is Exhibit C-1-A. These cars are placed on the railroad car and this instrument is prepared to Southern Railroad System in this case or to the railroad or whoever is hauling this car by rail, is that correct? [51] A. Yes. It is prepared by the plants as a matter of convenience. It is a requirement really, the bill of lading, is to be executed by the carrier.

Q. That is correct. On this item, who is the shipper as designated hereon? A. It reads G. M. Assembly Division, General Motors Corpn., Lakewood Plant, Atlanta, Ga.

Q. All right, sir. The shipper is General Motors Assembly Division, General Motors Corpn., Atlanta, Georgia. Who is the consignee of this shipment? A. The consignee in fact?

Q. No, sir. The consignee as indicated on the document here. It says Consignee and Address. A. G. M. Assembly Division, General Motors Corporation, in care of Complete Auto Transit.

Q. All right. It is shipped to General Motors Division, General Motors Corporation, in care of Complete Auto Transit, Inc. where? A. Jackson, Mississippi.

Q. In Jackson, Mississippi. Now General Motors ships this automobile from Atlanta, Georgia to themselves here in Jackson, is that correct? A. No, not as a matter of fact.

Q. According to this document, the consignor, the shipper . . .

By Mr. Cannada: We object to him arguing with the witness. He asked a question. Give the witness an opportunity to answer it.

[52] By the Court: Let him finish his answer, but he may interrogate him.

By the Witness:

A. As a matter of fact, it is to Complete Auto Transit who has an agreement with us and who is domiciled here in Jackson, Mississippi.

Q. May I ask you, as reflected by this instrument, who is the consignee? A. If you want me to reread this again . . .

Q. Yes, sir. A. As I did before?

Q. Yes, sir. A. Reading from the block Consignee and Address, G. M. Assembly Division, General Motors Corporation in care of Complete Auto Transit.

Q. All right. Now, this document is prepared covering the transportation of this automobile from Atlanta to Jackson. Do you prepare another document or does anyone prepare another document covering the transportation from Jackson to the dealer? A. Yes, there is a waybill prepared by Complete Auto Transit in accordance with our instructions to them.

Q. I refer you to this document, C-1-E. Who is the shipper in this instrument? A. The form states, preprinted form states General Motors Corporation.

Q. Where? A. It further states Received by Complete Auto [53] Transit at—and then X'd out at Jackson.

Q. This instrument covers the transportation—this is a shipping document covering the transportation by Complete Auto Transit from Jackson, Mississippi and it is consigned to whom? A. Hawkins Chevrolet, Inc., Calhoun City, Mississippi.

Q. There are in fact two contracts for transportation in effect, is that correct, one with the railroad and one with Complete Auto Transit? A. In line with the rates, there are two contracts for transportation.

Q. And there are two shipping documents prepared, one to the railroad and one to Complete Auto Transit, or one by Complete Auto Transit to the dealer? A. Right. I think what we are saying is that there isn't a joint rate. It is a combination of locals in connection with a through routing as stipulated in ICC cases.

Q. Well, I think that you testified that the rates governing both movements were in accordance with . . . A. Are in two separate documents you might say, or tariffs, yes.

Q. Who receives these cars in Jackson, Mississippi for General Motors? A. Who receives them for General Motors?

Q. Yes. Who signs for the receipt of them? A. As far as we are concerned, Complete Auto Transit is receiving them in connection with the movement of that vehicle from the plant to the dealership.

[54] Q. They are authorized to receive these vehicles from General Motors here in Jackson? A. From the railroad, the ICG Railroad.

Q. Right. They are delegated the authority to sign or whatever they do to take over these automobiles from General Motors here in Jackson? A. From the ICG Railroad here in Jackson.

Q. Have you delegated any authority to anybody to sign for the receipt of these vehicles? A. No, we feel that we have arranged a through movement of the vehicle from the assembly plant to the dealership; therefore, if both carriers provide the services that they hold themselves out to provide, then that vehicle will be delivered to the dealer in a reasonable time. Anything that is signed between two carriers as far as, oh, let's say the protection of one carrier against the other, in claims if there is a vehicle received by let's say Complete Auto Transit here with a dented fender, I am sure they would want to have the other carrier, the railroad in this case, acknowledge at the time of receipt at the interchange point that the vehicle was damaged, but this varies, and we don't have a direct interest in that so long as they perform the services they hold themselves out to perform.

Q. All right. Why are two documents prepared covering two shipments when in fact, as you claim, there is only one through movement of it? A. Because there is no existing joint rate. There are two rates.

[55] Q. Are the rates the same covering the rail movement or based primarily on the same factors? A. No, they vary considerably depending upon what plant they are coming from such as California to Jackson versus St. Louis to Jackson.

Q. As a matter of fact, while these automobiles are in transit, in rail transit, to whom do those cars belong until they arrive here in Jackson, Mississippi? A. If we are asking when title passes on those vehicles?

Q. Yes, sir. A. I don't know. That seems to be a difficult question even for the most expertise. I don't

profess to be expertise in that regard, but I do know the vehicles are invoiced to the dealer prior to that time or at the time of shipment.

Q. Basically, though, if General Motors ships an item or anybody ships an item to themselves in another location, they retain title of it until it reaches that next location, is that not proper? A. If I want to take possession for some reason at another location such as if I met 40 vehicles through the port of New York and I want to hold them in a particular location, yes, I would say they are still in my possession, yes.

Q. And while they are in transit, they could—General Motors could, if they so desired, could divert that automobile to some other location? A. Without the request of the dealer?

[56] Q. Yes, sir. A. I kind of doubt it. If we have already invoiced that dealer, I think we would be sorta sticking our neck out. If that dealer were to request through the sales organization a diversion for one eason or another, we would honor that request from our sales department.

Q. But the car still belongs to you at that particular point? A. You are asking about passing of title?

Q. Yes, sir. A. Like I say, as a layman in this regard I know the car is invoiced at the plant when we ship it. I know we have an arrangement under agreement with the dealers that we will deliver that vehicle to their place of business and we will select the carriers and all, and we will process claims in case of damages to this material.

Q. Suppose that vehicle sustained damage while in transit on the railroad. Who would be responsible and to whom would they be responsible? A. Who would be responsible?

Q. For any damage? A. Perhaps if I give you an idea what happens in that regard, eventually it is delivered to the dealer. The dealer takes exception at that point, saying, "The right front fender was damaged at the time I received it." Under our agreement with them, he will notify General Motors. General Motors will then process the claim with the carrier for reimbursement.

[57] Q. He notifies General Motors of the damage? A. That is correct under our agreement with him.

Q. And then General Motors takes whatever action is necessary to correct the damage? A. Yes, an investigation is made. If it is found that the carrier is liable, the carrier will pay the claim.

Q. What happens when those cars are unloaded here in Jackson, physically what transpires?

By Mr. Cannada: If he knows.

By Mr. Haddock:

Q. If you know. Excuse me. A. It varies with connecting carriers you know, railroads and haul-away carriers at various ramps. I have not seen the operation out here. We drove by last night.

Q. You don't know whether anybody inspects the automobiles when they are unloaded or . . . A. I would assume at some point in time Complete Auto Transit would inspect to protect themselves from having a claim filed against them that it was a fault of the carrier.

Q. In order to establish where the damage was done, Complete should inspect it when they take the property over here in Jackson for their protection? A. Yes, from the standpoint of a carrier, that is good business, yes.

Q. I would certainly think so. How long do these cars as a general rule stay on the lot here in Jackson? A. I can't think of Jackson offhand, but I imagine [58] Jackson is very normal with the rest of them. I'd say we would have a day or two bank under normal circum-

stances at our ramp in Jackson. I think Jackson falls in this category.

Q. Are all the automobiles that you ship to Jackson designated to some particular dealer? A. Yes.

By Mr. Haddock: I believe that is all.

By the Court: Any redirect?

Redirect Examination

By Mr. Cannada:

Q. Mr. Flanagan, referring back to this document which has been identified as Exhibit C-1-A, as a matter of fact down at the bottom it shows consignee and it lists a list of cities. Are those actually the dealers to which these individual cars are assigned? A. Yes, that is correct.

Q. So they are called the consignee in the document? A. On this form, yes.

Q. And those are the particular dealers and identify the vehicles by shippers number; that is really the serial number for the vehicle that is going to that particular dealer, is that correct? A. Yes. That is correct.

Q. I believe you testified that there are two rates [59] here, one for rail and one by the truck. They have separate rates filed with the Interstate Commerce Commission, is that correct? A. That is correct, yes.

Q. And they don't have through rates on file with the Interstate Commerce Commission, is that correct? A. I think the point there is that they don't have joint rates.

Q. Joint rates. They don't have joint rates? A. Yes. I feel a through rate is a combination of separately established rates in which there is a through or continuous movement.

Q. So you can look at their rates and determine what the charges will be to get it from the assembly

plant to the dealer, but they are separate charges. They are not joint charges? A. That is correct.

Q. But they are through charges, and therefore they have to be billed separately even though there is a through rate. The billing comes in two forms because they don't have a joint rate filed with the Interstate Commerce Commission? A. That is correct.

By Mr. Cannada: No other questions.

By the Court: You may be excused.

(Witness Excused)

[60] By Mr. Cannada: We call Mr. Walter Hansz.

MR. WALTER HANSZ,

the next witness called by Complainant, having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Cannada:

Q. Mr. Hansz, would you give your name to the reporter, please, sir? A. I am Walter Hansz (H-a-n-s-z).

Q. Where do you live, Mr. Hansz? A. I live in Detroit, Michigan. The address is 14300 Artesian.

Q. For whom do you work? A. I work for Complete Auto Transit, Inc.

Q. That is the complainant in this case? A. Yes.

Q. What title or position do you hold with that company? A. I am Vice President in charge of administration and also Assistant Secretary and Assistant Treasurer.

Q. How long have you been with Complete? A. I have been with Complete 11 years.

Q. You were with them during the entire time involved in this particular litigation? A. Yes, I was.

Q. Have you been familiar with their operations for the last 11 years? [61] A. Yes, I am familiar with their operations.

Q. Are you familiar with their operations in Mississippi? A. Yes, I am.

Q. Mr. Hansz, what type of business is Complete in? A. Complete is in the business of transporting vehicles, both passenger and commercial motor vehicles. We haul these vehicles exclusively for General Motors under a contract. We are a contract carrier. We have operating rights that have been authorized by the Interstate Commerce Commission. Our authority touches in some way all of the states except Hawaii and Alaska, but our active operation at the present time takes us in about 30 states. We carry roughly a million cars a year at our present rate, and we have for the last few years, which generates total revenues of about $55,000,000. We have operations, specific operations, in the following points. We serve a General Motors plant in Atlanta, Georgia where we receive cars directly from the plant to be transported. At Atlanta, Georgia also we receive cars from railroads who bring the cars in from other outside plants and take them off their multi-level rail cars and we receive them from them and then carry them on to the dealer destination in accordance with instructions that we have received from General Motors.

We have a terminal at Norwood, Ohio where we receive cars from the Norwood, Ohio General Motors plant for delivery of these motor vehicles directly to dealers. At Norwood also we receive cars from the railroad ramp. At [62] Doraville, Georgia we receive cars from the Doraville General Motors plant. At St. Louis, Missouri we also serve a plant there. At Willow Run, Michigan we serve a plant. Then we also serve two railheads or rail ramps which have no attendant plants, and that is Shreveport, Louisiana and Jackson, Mississippi. In these two locations we receive cars from railroads. We continue the interstate haul from that point on to the dealer destination.

Q. Mr. Hansz, I understood you to say you have certificates from the Interstate Commerce Commission under which all of these operations are conducted? A. Yes, sir.

Q. How long have you been conducting this kind of business? A. Complete has been in business for over 30 years and over those years we have picked up additional business. General Motors business fluctuates, of course. They open and close plants and they have new railheads. At one time we served railheads in Florida and one in Dallas, Texas. After a while we were no longer required to serve there and we closed up our operation there. We have had a fairly fluctuating service record with General Motors. Of course we have just the one contract. We serve General Motors exclusively.

Q. And they are all under your certificates from the Interstate Commerce Commission? A. That is correct.

Q. Do you have any intrastate certificates in the [63] State of Mississippi? A. No, we don't have any intrastate certificates. We have a permit to operate in Jackson, but it is to operate as an interstate carrier.

Q. This is a copy of this permit attached to Exhibit C-2, is it not, Mr. Hansz? (Document shown to witness.) A. Yes.

Q. So I understand you to say you have Interstate Commerce Commission operating rights through the State of Mississippi and in the State of Mississippi pursuant to the Mississippi statutes, but no intrastate rights from the Mississippi Public Service Commission? A. That is correct. We have never sought intrastate rights. It wasn't necessary to do so, because there is no General Motors plant here that General Motors has requested us to serve.

Q. Now in connection with the operations, and we will address them to the operations here in Jackson, Mis-

sissippi, how long have you operated here in Jackson, Mississippi? A. I believe the present operation started in 1960 or . . .

Q. 1960 what? A. Somewhere around 1960 as I recall.

Q. 1960, in that general area? A. Yes.

[64] Q. Prior to that time were you transporting vehicles from plants into Mississippi by truck? A. Yes.

Q. And have you continued to transport vehicles all the way from plants outside of the State of Mississippi into Mississippi by truck? A. Yes, passenger cars built at Doraville are in some cases trucked into Mississippi, and both passenger and commercial vehicles from Atlanta, Georgia. Some are shipped into Mississippi, and the cars that are built at Norwood are different from the cars that are built at Doraville, so we have occasion to ship some Norwood cars into Mississippi.

Q. By ship you mean you actually transport them by your truck all the way from the assembly plant into the state? A. That is right. Our equipment consists of a tractor and a semi-trailer which are specifically designed to haul passenger cars and commercial vehicles. We can carry five and seven, depending on the size of the vehicle, the shape, and sometimes pick-up trucks, panel trucks, vans having a much more bulky shape. They don't fit in as well as passenger cars, and maybe you can only carry five, whereas with passenger cars, you can carry seven.

Q. And this is all done pursuant to your authority from the Interstate Commerce Commission and you are paid for it in accordance with the tariff on file with the Interstate Commerce Commission? Is that correct? A. Yes, we have tariffs for each of the locations [65] where we operate. These tariffs specifically spell out the exact amount of money that we are to receive for each car

that we move from point of origin complete to the destination which is always the dealer. Our service is to the dealer's door.

Q. And this would be true of any shipment that you made during this period of time involved in this case? A. That is right.

Q. You say you started around 1960. Is that because the railroad put a ramp here? Why did you start this in Jackson? A. General Motors is always seeking the lowest cost form of transportation, and they determined that from certain of their assembly plants they could ship cars into Jackson, Mississippi by rail at a lower rate because as you know a multi-level rail car can carry 10 to 15 automobiles. This rail car moving over rail gives them a lower cost, so the railroads, although they can perform this service from rail terminal to rail terminal, they are not flexible enough to take the car to the dealer. So General Motors Corporation wishes to continue giving this service to the dealers without having the dealer come to the rail ramp to pick up his car. They employ us to take the car directly to the dealer, door to door. I suppose that one specific reason they have for doing this is that they want to be sure that the car is in perfect, salable condition at the time the dealer gets it at his door. At the time the dealer gets it at the door, and our employee delivers it, they make an [66] inspection. If the car is okay, they sign. If there are any damages, they note the damages. Our driver will look at the damages and will agree, and he will sign.

Q. Now basically my original question here was that you started this operation when the railroad put a ramp in Jackson, Mississippi which you understand was around 1960, the early part of 1960, is that correct? A. Yes.

Q. And you have been operating continuously since that time? A. Yes.

Q. Had you ever paid this particular five percent sales tax? A. No. When the auditors came into the office and asked to see the freight or the revenue documents and we asked why, we were kind of surprised because we hadn't known that there was a sales tax. In all the states that we operate, we do not pay in any case a sales tax on freight revenue based on a freight document. So this was highly unusual for us.

Q. And you have the same type of operation in other states, and you have never been confronted with this problem? A. Yes. The states that I have already enumerated in my testimony.

Q. So that this came as a surprise to you? A. Yes.

Q. Did you cooperate with them and give them the [67] information they requested? A. Yes, indeed. We wrote and asked for a copy of the specific law. In fact, I wrote for several copies. I gave one copy to our auditors. I gave one copy to the General Motors logistics office so that we could better understand what we were being assessed for and what we were probably going to pay.

Q. Mr. Hansz, back to your specific operation here in Jackson, during the period of time here involved, you have heard the testimony of Mr. Flanagan. To the extent that it applies to your understanding as to how Complete functions, are you in accord with what he has said? A. Yes.

Q. Did you take any exception to anything he said? A. No, I can't take any exception.

Q. Now with reference to the mechanics of how it works, what facilities does Complete have in Jackson, Mississippi to take possession of these vehicles from the railroad? A. We have some space that we rent from the railroad company, pay rent for the space that we use. We have a small garage on it where we do just a minimum of servicing. We don't do heavy repairs. We send

all our heavy repairs out to local garages, but we do have some minor things, maybe greasing, changing lights, things like that that may be done very quickly and it would be foolish to tie up a vehicle going out to a repair garage and back. We have a small office where we have telephone facilities and keep our [68] typewriters and other office equipment and where our supervisors do whatever paper work they have to do and the drivers can come in and do whatever paper work they have to do and from which they are dispatched.

Q. Do I understand you to say these facilities were actually leased from the railroad out at the ramp site? A. Yes.

Q. So that you are located right there on the railroad property? A. That is right. We have no other sites in Hinds County, Mississippi or Jackson.

Q. And this is right on the railroad property at the railroad ramp? A. That is correct.

Q. Now let's take this car that we have used as an illustration that came from the plant in Georgia coming by Southern, by a different railroad, but delivered by Illinois Central to you in Jackson. What are the mechanics? How does this work? A. The plant in Georgia ships these cars on a prepaid basis. That means that the car isn't shipped out collect so that when the dealer gets it, he has to pay. General Motors will pay it. They set up a listing of cars after it is determined how the cars each day—the cars come out of the plant and before they come out of the plant, they know where these cars are going. They must know because they can tell us. They set aside a certain group that is to go on rail and a certain group that go by [69] motor carrier. Those that go by rail, they develop certain documentation. I don't know the specifics of what that is because that is the railroad's business, but they give them instructions

to deliver—take the car to let us say Jackson, Mississippi, and they give all this information to the railroad at the plant site. The railroad then relays this information on to their representative at the Jackson, Mississippi ramp, rail ramp, so that he knows what cars to expect. He knows what rail cars are coming in, and he knows what automobiles are on those rail cars. At the same time they notify the automobile carrier which is Complete that they can expect to receive at the Jackson, Mississippi ramp certain automobiles. They give them a list. At that time to my knowledge, I believe it is at that time, they set up the liability for the freight charges, both to the rail and to the automobile carrier and put that in their accounting process. When the rail car arrives at Jackson, Mississippi, the railroad's representative or employee has his list, and . . .

Q. Prior to the time the railroad cars arrive, has Complete—would Complete normally have the information from General Motors? A. Yes. That information comes to us, and at the time of this period of tax we are considering, it went to our St. Louis office, and the St. Louis office relayed it on to our manager at Jackson, Mississippi, so that he had a complete list of the cars that were coming, who the dealer was, where they were going, and how much money he was going [70] to get for it, so that with this information he was actually able to get some of his paper work ready. He could get some of his road—the driver has to have a road copy of a waybill. We don't use the waybill to bill General Motors. This is all done by lists, but the bill has to be made out so that the driver can show authority to proceed on the road in case a Mississippi State Trooper stops him and asks, "What is your authority to operate?" He also has to have a copy of the bill to get a receipt from the dealer. So we can get some of those ready. We can get practically

all of that ready except that we don't know who the driver is going to be or what the tractor number or the trailer is going to be. But he can get that ready, and this improves the efficiency in delivering the car.

Q. In other words, even before the vehicles have arrived on the railroad, you have already gotten instructions from General Motors that these vehicles are on the way by the railroad? A. Right.

Q. And the dealer that they are going to by serial number? A. That is correct.

Q. So that you can be setting up loads, so to speak, of seven or eight cars that you take in a general area and have that all arranged by the time the cars ever get there? A. We can—there is just a slight correction to that. We can get the paper work ready. We don't definitely make up a full load, because we wait to see how these rail [71] cars are going to come in. Sometimes they are delayed. Sometimes they don't come in on time when they are supposed to. Maybe one will come before the other. Maybe the one coming from Kansas City will arrive before the one from Atlanta, and that will bring in a whole set of new cars. We have the paper work, but we don't know about the timing. But as soon as we know they are there, then we can start to make the loads.

Q. The vehicles come in by rail. Who unloads them? A. The railroad unloads them.

Q. Does the railroad deliver them directly to Complete? A. Here is actually what happens. There is quite a bit of activity in that yard. There are about 300 cars a day coming in. We don't attempt to make up loads just the minute the car comes in. We give the railroad time to get these cars off of their multi-level—the automobiles off their multi-level loading and get them spaced out in the yard. We have what we call dispatch

time. That is the time in which we assemble our drivers and men. We know what we've got. We give them the loads to take out. This is at about 5:00 o'clock in the morning in Jackson, I think. Different places have different times. We figure that we have accepted that car at 5:00 in the morning when we open the dispatch gate. Now when the cars are unloaded from the multi-level rail car, the automobiles, vehicles let's say because here are a lot of passenger cars and trucks, pick-up trucks, panels and so on—I presume—I don't presume—I know [72] that the representative of the railroad ticks off the cars to be sure that everything he is told is coming is there, and that none are missing.

When they get down in the yard ready for dispatch, then our representative ticks off the cars to be sure that they are all there so that we haven't lost one. We don't sign a document saying we received car number so and so and give it to the railroad. They have checked off their cars and they are satisfied. We have checked off the cars and we are satisfied. So then we begin to make up our loads and get them loaded and on their way. In this procedure our employees will look the cars over and if they find a car with damage, whatever damaged cars there are, they will get ahold of the railroad representative and ask him to look at the damage, and they will ask him to sign an acknowledgement of damage, that we got that car from the railroad damaged, and then we will sign that damage paper, the paper that describes the damage. We do that because we know that when we get that car to the dealer, the dealer will see it and he will make all the notations. He will ask our employee to certify that that was damaged before he got it. He doesn't care who he is going to get this back from. He knows that either we damaged it or the railroad, so then he has a copy of this, and with that copy he makes his

claim for damages, and he is required to send that claim to General Motors. General Motors will have copies—will approach us on the damage, and we will have to show either that it is our damage or it is the railroad's. If it is our damage, we will [73] process it and we will pay General Motors for the damage. If it isn't ours, we will put a refusal slip on it. We will say that because we have a receipt from the railroad showing that we received the car in a damaged condition, this claim should go back to the railroad. But the original claim in most cases comes to us because we have the responsibility of delivering the car to the dealer, the final consignee in the interstate movement.

Q. Mr. Hansz, insofar as Complete Auto is concerned in its operations in the City of Jackson during the period of time involved, do you have any contact with anybody in connection with the transfer of these motor vehicles from the rail ramp that you have described here, turning them over from the railroad to Complete, other than with the railroad representatives themselves? A. No.

Q. And they are delivered directly to you by the railroad representative? A. That is right.

Q. No one makes inspection of any kind except the inspection by the railroad or Complete to see if there is any damage so as to see which one of the carriers will be responsible for the . . . A. We make inspection . . .

Q. Let me finish. To see which one of the carriers would be responsible for the damage, is that correct? A. We make inspection to protect ourselves.

Q. The inspection is to determine, if any, the [74] the responsibility of the respective carrier for the damage to the vehicle, is that correct? A. Yes.

Q. So that if as a matter of fact there is no damage, there is nothing signed that you give to the railroad or

the railroad gives to you as between the carriers? A. No.

Q. The vehicle is just delivered by one carrier to the other, is that correct? A. Yes.

Q. I hand you a carbon copy of a document here of Complete Auto which shows it signed by Illinois Central and Complete. Do you recognize what that is? A. Well, it says . . .

Q. Is that the type of document that is executed if there are damages? A. It shows exception to the car, that the chrome molding has been torn off.

By Mr. Cannada: We would like to offer this as an exhibit as an illustration of the type of document that is signed by Complete and the Railroad when there is damage to a vehicle, if the Court please.

By the Court: Let it be marked and entered.

(The document introduced by Complainant on direct examination of the witness Hansz was marked and received in evidence as Exhibit C-4 and is as follows:)

Exhibit C-4

COMPLETE AUTO TRANSIT, INC.
P. O. Box 4943 · Fondren Station
JACKSON, MISSISSIPPI, 39216

Rail Car No. RTTX150192 11/6 Model 1X69D4 Serial No. L137257

Consignee CLIFF COLBERT CHEV OLDS CO C.A.T. W/B 388119

City GRENADA State MS

Date and Time received by Rail 11/18/73 By C.A.T. 11/20/73

Exception: CHROME MOULDING IS OFF THE RIGHT REAR DOOR

EXHIBIT

JUN 12 1974

MARY BURKEIT Reporter

Inspected by: _____ Complete Auto Transit

Acknowledged by: _____ Illinois Central Railroad

By Mr. Cannada:

Q. Mr. Hansz, this document which has now been identified as Exhibit C-4 refers to a car that was shipped to Grenada, Mississippi, is that right? A. Yes, to Cliff Colbert Chevrolet-Olds Company.

Q. It shows on there an exception that the chrome molding is off the right rear door? A. That is what it says.

Q. And that is signed by . . . A. B. Collins who is our employee.

Q. For Complete Auto, and it is acknowledged by Illinois Central Railroad by B. C. James. A. I don't know who that signature is but it says Illinois Central Railroad below his name.

Q. But this is the type of thing that you do, and the only time you use any written instrument is between you and the rail carrier if there is some damage to a vehicle? A. That is right.

Q. Now this document which has been identified as Exhibit C-1-D, and I believe you heard Mr. Flanagan testify that it is illustrative of the type of information that is sent by General Motors to you when they ship the car, is that correct? A. Yes.

Q. This is the type of information that you have from which you begin making your plans to pick up this car and take it to the dealer? A. Yes.

[76] Q. I see a stamp on the back side of it. It is stamped received. Is this for your own internal purposes or is this given to the railroad, or what is the purpose of that? A. No, that is our own document for our own internal checking.

Q. In other words, you don't turn this document over to the railroad? A. No.

Q. Mr. Hansz, when your men pick these vehicles up as you have described, the railroad checks them out

and turns them over to your man and you load them. Then what happens to the vehicles? A. Once a load is made up, the driver has all of his documents, and then he drives the vehicles to the dealer.

Q. And delivers them at the dealer? A. At the dealer's door.

Q. You have heard the description here by Mr. Flanagan that some are all in Mississippi and some partially in Mississippi and partially out? A. That is right.

Q. And some go all the way out of the state, I guess, some loads? A. Yes, there might be a few loads that don't even have a drop in Mississippi, but most of them would have a first drop in Mississippi and a few cars out near in other states.

Q. And in connection with the billing, you have [77] a contract on file with the Interstate Commerce Commission showing the tariff, the rates you will charge for this service, is that correct? A. That is correct.

Q. And when do you send in your bill for your tariff? To whom is it sent? A. We don't really send anything in. In some cases—there are a number of ways of doing this, and each of the General Motors plants has a different plan. Some of them will make an IBM listing of the cars and will make the complete pricing which they will use in their accounting procedures, and they will send a check to us for that amount. In other cases we will make out an invoice. It is really more of advice than an invoice, listing the number of automobiles received from certain cars in certain places. We will send that to them and we are paid. Usually we do that when the money isn't forthcoming in the normal way from General Motors, but usually it comes without our sending it in.

Q. In other words, they know the cars have been sent to you for transportation and within the contract period—I believe you said seven days—they usually just

pay you for it as they would any carrier? A. Yes. Of course all carriers are involved in a reporting procedure to General Motors as to when they deliver the cars. We have to report in daily each car as we have delivered it.

Q. Mr. Hansz, I understand that Complete Auto [78] Transit is a Michigan corporation, that is correct, isn't it? A. Yes, it is incorporated in Michigan.

Q. When did you pay the tax that is the subject of this lawsuit? Have you got your records there? A. I brought a photocopy of the checks with me. The first check was for the period August 1st, '68 through July 31, '71.

Q. In what amount? A. In the amount of $124,-384.49.

Q. When did you pay that? A. That was paid on July 13, 1972. The reason why there is a delay there is that after we received the notice and the demand for tax, we asked for a hearing before the Commission, and we did get it, and the assessment was upheld. Then after that procedure was all completed, we sent in our check. That check includes interest from the period ending July 31st. In fact, it includes interest going way back to '68 and '69; each year had a separate rate on it.

Q. The amount that you paid on July . . . A. July 13th, 1972.

Q. You paid how much? A. $124,384.49.

Q. And what other payments did you make? A. A second audit, of course, was made for the period August 1, '71 through July 31, '72, and that total amount was $42,990.89 which included tax and interest.

Q. When did you pay that? [79] A. That was paid on February 1, 1973.

Q. Mr. Hansz, have you been reimbursed for those taxes in any way? A. No.

Q. Who bore the complete burden of the tax? A. We did.

Q. Was there anything in your tariffs on file with the Interstate Commerce Commission or any arrangements with General Motors or anyone else that they would reimburse you for this cost? A. No.

Q. Had it been calculated in determining the tariff that you put in your rates? A. We never placed the five percent on any charges to General Motors for this.

Q. In computing the charges that you had on file the five percent was not included in those charges? A. No. We could only charge what was in the tariff.

Q. And you have never passed this on, this tax, to anyone either directly or indirectly? A. No.

Q. You have not collected it from anyone? A. No.

Q. And if you are not successful in getting this back from the State Tax Commission, then you will have borne the full burden of this tax yourself, Complete Auto? A. That is right.

[80] By the Court: May I have the amounts of those? A. And the dates?

By the Witness: The July 13, 1972 check was $124,-384.49. The February 1st, 1973 check was $42,990.89. I would like to add something to the last. We negotiate tariff rates with General Motors because we are a contract carrier, and at that time we review our costs and determine a revenue rate that will cover our costs and give us a fair margin of profit. It may be that when it is finally determined by this court case that this is going to be an extra cost, we may get this recognized as part of our costs.

By Mr. Cannada:

Q. That would be for future operations? A. That is right.

Q. If it was a cost, but insofar as this tax is concerned, then, you have borne it and paid for it? A. That is right. The period of the tax, the period of the activity is gone.

Q. Now, Mr. Hansz, I believe you have prepared a schedule of taxes that you have paid the State of Mississippi. Would you state to the Court what corporate franchise taxes complete paid to the State of Mississippi for the years involved here, that is, the calendar year '68 through the calendar year '72? A. Going back to 1968, do you want me to read that?

Q. Yes, if you would. A. 1968 . . .

[81] By Mr. Haddock: I object to this, Your Honor as being irrelevant. We are not concerned of all these other taxes. Again we will agree that he has paid taxes, whatever he was supposed to pay.

By the Court: I sustain the objection.

By Mr. Cannada: May I make my record, if the Court please? I think this is significant. We went through this in the Dunn Brothers. I simply did this in the Dunn Brothers case, just saying we agreed that we paid all lawful taxes, and our Supreme Court said that is not sufficient. You should show the taxes that you have paid.

By the Court: The Supreme Court said that had a bearing?

By Mr. Cannada: Yes, sir. As I started to say a minute ago, I agree with you. I don't think it has any bearing at all, but there is a decision which indicates that what taxes you have paid may have a bearing, and that is what I think is important.

By Mr. Haddock: That is a question that I don't think is involved here that was present in the Dunn Brothers case. That involved a question of interstate commerce in bearing a fair proportionate share of local taxes for the use and privilege of state government. We will

agree that they have paid [82] whatever taxes are required of them.

By Mr. Cannada: It would only take a moment, if the Court please, and if you would permit, I would like to put this in.

By the Court: You may state what you would have proved.

By Mr. Cannada: May I make my record by cross-examining the witness?

By the Court: You are filling up the record just exactly the same way as if we had let it in, counsel.

By Mr. Cannada: It is essential, if the Court please, that we get this testimony, not essential, but I think it is important that we get this information in.

By the Court: If you have an exhibit, why don't you just present that?

By Mr. Cannada: May I then offer as an exhibit to the testimony of this witness this schedule showing taxes paid by Complete Auto to the State of Mississippi.

By the Court: It may be marked for identification.

(The document introduced by Complainant on direct examination of the witness Hansz was marked for identification as Exhibit C-5 and is as follows:)

Exhibit C-5

SCHEDULE OF TAXES PAID BY
COMPLETE AUTO TRANSIT TO THE STATE OF MISSISSIPPI

Corporate Franchise Taxes

1968	$1,170.00
1969	$1,425.00
1970	$1,567.50
1971	$1,297.50
1972	$1,670.00
	$7,130.00 Total

Corporate Income Taxes

1968	$5,924.42
1969	$2,683.30
1970	$(941.06)
1971	$5,656.49
1972	$1,884.86
	$15,208.01 Total

Ad Valorem Taxes Paid to the State on Vehicles

1968	$4,771.34
1969	$4,601.50
1970	$5,238.64
1971	$4,208.49
1972	$16,802.77
	$35,622.74 Total

Fees Paid for License Plates for Vehicles

1968	$41,915.90
1969	$45,820.50
1970	$46,702.00
1971	$42,587.25
1972	$50,933.70
	$227,959.35 Total

In addition to the foregoing Complete Auto pays ad valorem taxes to the City of Jackson and the County of Hinds on the personal property such as office furniture, etc., at its rented facilities here in the City of Jackson. Complete also pays unemployment taxes and other taxes of similar nature.

[83] By Mr. Cannada: May I further state for the record that if permitted to do so, we would show by this witness that these taxes were actually paid by Complete to the State of Mississippi; that in addition to that, as shown on the bottom, additional ad valorem taxes were paid to the County of Hinds and to the City of Jackson, and the basis on which the tax was determined for the franchise tax and the income taxes, which bases included a factor that took into consideration the gross receipts received by this carrier for the very hauls that are attempted to be taxed in this lawsuit.

That is all of this witness.

By the Court: Since it is near the lunch hour, we will recess until 1:30 P.M. (Proceedings were recessed at 10 minutes of 12:00 for lunch, and were resumed at 1:30 P.M.)

Cross Examination

By Mr. Haddock:

Q. Mr. Hansz, I want to clear up one particular point. I believe you testified this morning that you did not have an intrastate permit in the State of Mississippi, is that correct? A. Yes, sir.

Q. Is it true that the reason you don't is because you never applied for one nor did you think that you needed one? A. We didn't need one.

[84] Q. It is your impression that you don't need one, and you therefore have never applied for one? A. That is right.

Q. To clear up one or two little matters dealing with the responsibilities and to whom the responsibility is to, so far as property that you are transporting is concerned, if the damage is done to a vehicle in transit from the plant, from the plant to the loading ramp, that is the responsibility of the railroad? A. Yes.

Q. From the railroad after it is turned over to you, from the time it is turned over to you in Jackson, Mississippi to the dealer, the responsibility is yours? A. And this is the way that works out. When the dealer has the damaged car, he makes out a claim and he sends it to General Motors and the claim comes to us because we were the delivering carrier. Then when it comes to us, we check our records and see that we have a clear receipt from the rail as to that damage. We have a notation from—on the damage and the railroad acknowledged it, so then we send that claim back. We deny that claim and send it back to General Motors and say, "We are not responsible. Apparently the railroad is." Then we are through with it.

Q. The responsibility for damage while you have the car in your custody is to General Motors? A. General Motors presents the claim and we pay General Motors.

Q. Do you know whether the same is true when the [85] railroad has custody? A. I don't know the railroad's business. I assume it is handled the same way.

Q. Just to clear up a matter as far as the mechanics is concerned, regarding the bill of lading for the transportation of the automobile, how do you go about getting the automobile in Jackson, Mississippi? A. Physically, when the railroad brings their rail car in, they unload the rail car and they place these cars on their facility that is on their property. The property is divided up into two parts. We have a small part which is where we have our office and our garage and our vehicles and our loading dock. When they unload the car, they place it on their property and it is still theirs. At 5:00 o'clock in the morning when we start dispatching cars, then our employees go over and get the cars that they need to make up the loads. At that time we take possession of the car.

Q. How do you do this? Do you just go out and take it physically? A. That is right. We just take it.

Q. Is there any paper transaction involved? A. Not between us and the railroad, no.

Q. I refer you to this exhibit, please, sir. That indicates that that car is shipped to Jackson. It says the consignee is General Motors Corporation care of Complete Auto Transit at Jackson, Mississippi. Is that not right? A. It says in one place consignee General Motors Assembly Division, and then down below it says consignee [86] England, Arkansas; Little Rock, Arkansas; Pocahontas, Arkansas; . . .

Q The eventual consignee is the latter part? A. That is the consignee to us.

Q. The consignee as far as that document is concerned —it was shipped from General Motors to General Motors here in Jackson in care of your plant or in care of your location? A. That is what it says here.

Q. Do you have a man here by the name of Ace Lauceman or something? On your lot? A. I don't know. I don't recognize that name.

Q. What is the man's name that operates your lot, or operates the lot for you out here at your . . . A. Bob Schanauer.

Q. Does he do anything with these documents to show an acceptance on your part from General Motors here in Jackson? A. No, not that I know of.

Q. Are you acquainted with a stamp that he puts on? A. Yes.

Q. Are you familiar with what that stamp says? A. Ah, it says received—something—received for General Motors, Complete Auto Transit, and then he signs it, you know.

Q. This is the stamp? (Document shown to witness.) A. That is right. Received.

Q. It says, "Received General Motors Corp."? A. Yes.

[87] By the Court: What is the exhibit number on the other side?

By the Witness: C-1-D.

By Mr. Haddock:

Q. It says, "Received General Motors Corp. Chevrolet Motor Divison" with the date, and then has below that, "Complete Auto Transit, Inc. By A. Schanauer." A. A. Schanauer.

Q. Who is your employee? A. Yes.

Q. This indicates that when he puts this on here that he is receiving this automobile from General Motors? A. Well, it is our own—it is for our own record and our own purposes. It says Chevrolet Motor Division. That indicates the stamp is very, very old because somewhere along the line four or five years ago, five years ago everything was shipped in the name of General Motors Logistics Divison, General Motors, and not—Chevrolet wasn't separate. But this is an old stamp that we use for our own convenience to indicate that we have processed the car. It is one of the things we use.

Q. When you get this car here in Jackson, you then make up a bill of lading or waybill or whatever? A. We call it a waybill.

Q. A waybill, from Jackson to the dealer? A. Correct.

Q. On which you itemize the cost of the transportation from this point to the dealer? [88] A. Mostly that bill is used to show the driver—give the driver the route, give him a copy to authorize his traveling on the road with that cargo, and to get a receipt from the dealer and to leave a receipt from the dealer. Actually we don't

use a copy of that to bill General Motors with, so there wouldn't be any reason for the amount of money being on it.

Q. Now, the payment for these transportation charges —I don't know—you may not know about the railroad's handling of them, but so far as your charges are concerned, you bill General Motors for your part of the transportation? A. Most of the time we don't have to bill. They make IBM lists at the time that they ship, and these go on to their accounting department and they are all priced. They have the rates right in a computer and they are priced, listed and totaled and they send us a check. They send us one of those lists with a remittance advice, so we don't have to bill them. Now in some cases, they make mistakes, or we think they make a mistake, so then we will issue a due bill or a credit, or some plants that we ordinarily don't get many cars from and that we are not familiar with, they have a little different procedure, they might not send us a bill, and we will sit and wait for it and nothing is forthcoming, so we finally will check with them or maybe we won't check with them. We will make out our own invoice and send it in and try to push them for payment. But this is a very small part of our collection procedure.

[89] Q. At any rate, you look to General Motors for the payment of the transportation costs from Jackson to the dealer? A. That is right.

Q. In no case do you ever bill the railroad for any part of these transportation charges? A. No.

Q. I believe that is all.

By the Court: Any redirect?

By Mr. Cannada: We have no further questions.

By the Court: You may be excused.

(Witness Excused)

By the Court: Who do you have?

By Mr. Cannada: We rest.

(Complainants Rest)

By Mr. Haddock: If Your Honor will indulge us five minutes, we may rest.

By the Court: Take ten minutes. (A short recess was taken after which proceedings were resumed.)

By Mr. Haddock: Your Honor, we will rest our case at this time.

[90] (Defendant Rests)

By the Court: Do you have any rebuttal?

By Mr. Cannada: No, we have no rebuttal.

By the Court: All right. You gentlemen have indicated that you want to file briefs in this cause and that you will submit simultaneous briefs. That is my understanding. That is fine with the Court. Thank you very much.

(Proceedings were concluded at 2:00 P.M.)

(Certificate omitted in printing)

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

(Title omitted in printing)

OPINION OF THE COURT

(Filed August 5, 1974)

The facts in this case are not in dispute. The Court herewith uses the succinct statement of the Defendant as to the statement of facts. The Complainant, Complete Auto Transit, Inc., is a Michigan corporation, licensed by the Mississippi Public Service Commission to haul motor vehicles in Mississippi. The Complainant is engaged in the business of hauling motor vehicles for General Motors Corporation. In the case at hand, General Motors Corporation shipped the vehicles via rail from various assembly plants located outside the State of Mississippi to a railread ramp located in Jackson, Mississippi. At this point the vehicles are placed on a lot awaiting further shipment by the petitioner to various General Motors dealers in the state of Mississippi. The vehicles are shipped under a uniform straight bill of lading prepared by the manufacturer, General Motors Corporation, with General Motors Corporation as consignee, in care of Complete Auto Transit Corporation at Jackson, Mississippi, for further shipment to the dealers. A separate bill of lading is prepared for the shipment of the vehicles by Complete from General Motors Corporation in Jackson, Mississippi, to the various dealers in the state. It is only the charges for hauling the cars under the bills of lading from General Motors, Jackson, Mississippi, to the various dealers within Mississippi that have been taxed.

The Complainant inspects the vehicles here in Jackson prior to accepting them in order to ascertain if they might have been damaged in transit. After the petitioner ac-

cepts the vehicles from General Motors at Jackson, Mississippi, as evidenced by a stamped receipt, they are loaded on the truck equipment and delivered to the various dealers located in Mississippi as shown on the original bill of lading. General Motors ships under two separate hauling contracts, one with the railroad and the other with complainant. General Motors pays both complainant and the railroads, under separate billings.

The State of Mississippi, pursuant to the authority of Sections 10105 and 10109(2) of the Mississippi Code of 1942, levied a sales tax on the gross receipts earned by the complainant from transporting the vehicles from the lot in Jackson, Mississippi, to the various General Motors dealers in the same state. No tax was assessed for transporting the cars from Jackson, Mississippi, to points outside the state. The State Tax Commission assessed the complainant for taxes in the amount of $167,-375.03 for the period August 1, 1968, through July 31, 1972.

The Court is impressed with the fact that once the vehicle was delivered to the rail carrier, General Motors had absolutely nothing further to do with the vehicle. Through rates were established in that both the rail carrier and the truck carrier had on file with the Interstate Commerce Commission the charges that would be made for the portion of the haul performed by each carrier, but joint rates were not in effect, that is, no rates were filed with the Interstate Commerce Commission which would permit General Motors to pay one carrier and have that carrier divide the charges with the other carrier. It was therefore necessary for General Motors to pay to the rail carrier the amount of its charges for the portion of the haul performed by the rail carrier and to pay to the truck carrier the charges for the portion of the haul performed by the truck carrier.

However, this Court feels that it is bound in this cause by the ruling of the Mississippi Supreme Court in *Rhoden* v. *Goodling Enterprises, Inc.*, a Mississippi case of June 4, 1974, 295 So. 2d, 433, which had to do with a cable television system serving the Meridian Naval Air Station in Lauderdale County, Mississippi. The estimate at the time of the trial was that ten to fifteen percent of the signals re-transmitted by the corporation to its subscribers within the State of Mississippi originated outside the State of Mississippi. In reversing the lower court (which had relied primarily on *Fisher's Blend Station, Inc.* v. *Tax Commission of the State of Washington*, 297 U.S. 650, 56 S.Ct. 608, 80 L.Ed. 956 (1936)) which found that since part of the signals emanated from out-of-state broadcasting stations, the assessment affected interstate commerce and therefore was improper and uncollectible, the Court said:

> "We acknowledge the interstate character of CATV systems . . . ., but nevertheless are of the opinion the tax in the present case was not unduly burdensome to interstate commerce and is not constitutionally prohibited.
>
> "The Fisher's Blend case held that a state occupation tax measured by the gross receipts . . . was an unconstitutional burden upon interstate commerce."

The Court went on to say of that decision:

> "The Court pointed out that the interstate commerce involved was not subject to the risk of repeated exactions of the same nature by other states, thus negating the likelihood of cumulative burdens of unconstitutional proportions."

The Court further went on to say that all of the income upon which the tax could be imposed is derived within this state. This is likewise true in the case at

Bar, since the Commission did not impose a tax upon any deliveries by the Complainant to points outside the State of Mississippi.

Therefore, the prayer for relief must be denied and Complainant's bill of complaint must be dismissed with all costs being taxed to Complainant.

/s/ James Arden Barnett
Chancellor

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

(Title omitted in printing)

DECREE

(Filed August 6, 1974)

This cause having come on for hearing on the 12th day of June, 1974, before the Chancery Court of the First Judicial District of Hinds County, Mississippi, upon a petition filed by Complete Auto Transit, Inc., to declare an assessment of sales tax in the amount of $167,375.03 made by the Mississippi State Tax Commission for the period August 1, 1968, through July 31, 1972, invalid; and this Court, having heard and considered the arguments and evidence presented in the case, and having issued a written opinion in the matter, a copy of which is attached hereto and made a part hereof, doth find:

That the prayer for relief asked for by the complainant, Complete Auto Transit, Inc., must be denied, and the bill of complaint must be dismissed with all costs being taxed to the complainant.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the prayer for relief asked for by the com-

plainant, Complete Auto Transit, Inc., must be denied, and the bill of complaint must be dismissed with all costs being taxed to the complainant.

The petitioner, Complete Auto Transit, Inc., having announced in open court its desire and intention to appeal from this decree and having petitioned in open court for such an appeal, the defendant being present in court at said time, said petition is granted and appeal allowed.

ORDERED AND ADJUDGED, this the 6th day of August, 1974.

/s/ James Arden Barnett
Chancellor

Approved As to Form:

Attorneys for Complainant:

Butler, Snow, O'Mara, Stevens & Cannada
Attorneys at Law
Post Office Box 22567
Jackson, Mississippi 39205

By: /s/ Robert C. Cannada

Attorneys for Defendant:

/s/ James H. Haddock
James H. Haddock

/s/ Joe D. Gallaspy
Joe D. Gallaspy

/s/ Wilson E. Hodge
Wilson E. Hodge
Post Office Box 960
Jackson, Mississippi 39205

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

(Title omitted in printing)

NOTICE TO COURT REPORTER TO TRANSCRIBE NOTES AND APPELLANT'S DESIGNATION OF RECORD

(August 9, 1974)

TO: MRS. MARY BURKETT
Hinds County Chancery Court Building, Div. IV
Jackson, Mississippi 39201

Dear Mrs. Burkett:

Complete Auto Transit, Inc., complainant in the above styled and numbered cause, feeling aggrieved on account of the Decree entered in said cause, hereby notifies you that it desires that you transcribe and file your stenographic notes of the trial and proceedings in the above styled and numbered cause for purposes of appeal.

Pursuant to and in accordance with the statutes of the State of Mississippi in such cases made and provided, appellant hereby designates the following to be included in the record of this case for purposes of appeal to the Supreme Court of the State of Mississippi:

1. A copy of all pleadings and amendments thereto filed by the parties herein.
2. A transcript or copy of all proceedings conducted by and before the Court prior to the taking of testimony in this cause.
3. A transcript of all testimony of all witnesses who testified in the trial of this cause.

4. All exhibits to testimony introduced in evidence in the trial of this cause.
5. All documentary evidence introduced in the trial of this cause.
6. All testimony offered or tendered, including all exhibits offered or tendered, after the sustaining of an objection thereto.
7. A copy of all motions, objections, rulings of the Court, and other proceedings made in the course of the trial of this cause.
8. A copy of all orders of the Court entered in this cause.
9. A copy of the Opinion of the Court filed in this cause on August 5, 1974.
10. A copy of the Decree rendered and entered in this cause on August 6, 1974
11. A copy of this notice.

Respectfully,

Butler, Snow, O'Mara, Stevens & Cannada

By: /s/ Robert C. Cannada
Robert C. Cannada
Attorneys for Appellant

(Certificate omitted in printing)

IN THE SUPREME COURT OF MISSISSIPPI

No. 48,590

COMPLETE AUTO TRANSIT, INC.

vs.

CHARLES R. BRADY, JR., CHAIRMAN MISSISSIPPI STATE TAX COMMISSION

(Filed April 13, 1976)

BEFORE GILLESPIE, ROBERTSON AND LEE

GILLESPIE, CHIEF JUSTICE, FOR THE COURT:

This case involves an assessment for sales taxes imposed upon Complete Auto Transit, Inc., a Michigan corporation (hereinafter Taxpayer). Taxpayer paid the taxes and filed suit in the Chancery Court of Hinds County to recover the sum paid. From a decree upholding the validity of the assessment, Taxpayer appealed to this Court.

Taxpayer is engaged in the business of hauling motor vehicles for General Motors Corporation. It is a certificated contract carrier operating throughout the United States pursuant to authority of the Interstate Commerce Commission. The Mississippi activity of Taxpayer requires the maintenance of a yard adjacent to a railroad at Jackson where an office, together with facilities for servicing Taxpayer's trucks, is maintained. Taxpayer receives approximately 350 automobiles per day from General Motors Corporation with whom it has a contract which is renegotiated from time to time in order to assure Taxpayer a fair return.

The General Motors plant in Georgia assembles automobiles for delivery to dealers in Mississippi and surrounding areas in other states. A sticker is placed on each

automobile when it leaves the assembly plant in Georgia showing the dealer to whom it is to be sold. The vehicles are then loaded on railroad cars with a bill of lading showing the consignee as General Motors, in care of Complete Auto Transit. The bill of lading also shows the name of the city to which each automobile is to be delivered but not the name of the dealer to whom it is to be sold. The automobiles are transported to Jackson, Mississippi, by railroad and are unloaded onto Taxpayer's yard adjacent to the railroad. The bill of lading is then stamped "Received by General Motors Corporation, Chevrolet Motor Division, by Complete Auto Transit, Inc." The vehicles are then inspected for damage, and Taxpayer prepares waybills showing the shipper as General Motors Corporation, the description of the automobiles, and the names of the consignees (General Motors dealers in cities other than Jackson). As soon as practical, usually within twenty-four to forty-eight hours, the vehicles are loaded on Taxpayer's trucks and delivered to dealers at various points in and out of the State of Mississippi.

Taxpayer is paid on a contract basis, and ordinarily no bill is rendered by Taxpayer to General Motors Corporation. The entire transportation charge is collected by General Motors from the Dealer who ultimately receives the vehicle. The charges paid by General Motors to Taxpayer for transportation of vehicles from Jackson, Mississippi, to various General Motors dealers within the state are readily separable from charges for transporting vehicles from Jackson beyond the borders of Mississippi. Likewise, the transportation charges paid the railroad company are in no way connected to the charges paid by General Motors to Taxpayer.

The question is whether the gross income derived by Taxpayer from transporting automobiles from Jackson

to other points in the State of Mississippi is taxable by the State.

The statute levying the tax is Mississippi Code Annotated section 27-65-13 (1972), which provides:

> There is hereby levied and assessed, and shall be collected, privilege taxes for the privilege of engaging or continuing in business or doing business within this state to be determined by the application of rates against gross proceeds of sales or gross income or values, as the case may be, as provided in the following sections.

The following sections, referred to in the statute, *supra,* describe the businesses taxed as "truck or any other transportation business for the transportation of property for compensation . . . between points within the state. . . ." The amount of the tax is five percent of the gross income.

The general rule is that a state may tax a local activity affecting or related to interstate commerce if the local activity is sufficiently separate from the out-of-state aspects of interstate commerce. Memphis Natural Gas Co. v. Stone, 335 U.S. 80, 92 L. Ed. 1832, 68 S.Ct. 1475 (1948). However, such a tax is invalid if there exists the danger that it can impose cumulative burdens on interstate commerce not borne by local commerce. General Motors Corp. v. Washington, 377 U.S. 436, 12 L.Ed.2d 430, 84 S.Ct. 1564 (1964). The local activity taxed must be one that does not lend itself to repeated exactions in other states. Memphis Natural Gas Co. v. Stone, *supra.*

The present case is controlled by cases arising in this State. Interstate Oil Pipe Line Co. v. Stone, 203 Miss. 715, 35 So.2d 73 (Miss. 1948), aff'd. 337 U.S. 662, 93 L.Ed. 1613, 69 S.Ct. 1264 (1949), involved the first leg of an

interstate shipment. The tax was levied on the gross receipts from the operation of the oil pipelines wholly within the State. *Interstate* operated pipelines which were used to transport oil from various fields in Mississippi to loading racks adjacent to railroads elsewhere in the State. From the racks, the oil was pumped into railroad tank cars for shipment outside the State. If no tank cars were available, the oil was stored in tanks near the loading racks for short durations until cars were available. When the oil was delivered to *Interstate,* it was accompanied by shipping orders from the producer or owner directing that the oil be transported to out-of-state destinations. There was no through bill of lading from the point of origin at the fields to the point of destination outside the State. *Interstate* was paid on a per barrel rate, specified in its tariff, for transporting the oil from the gathering point to the loading rack at the railroad. In upholding the validity of the tax, the Supreme Court of the United States said in a plurality opinion that it would not pause to consider whether the business of operating the pipeline was in interstate commerce, for the State had the power to impose the tax involved. The Court said that the tax was not invalidated by the commerce clause of the Federal Constitution merely because it imposed a direct tax on the privilege of engaging in interstate commerce. The Court concluded as follows:

> Since all the activities upon which the tax is imposed are carried on in Mississippi, there is no due process objection to the tax. The tax does not discriminate against interstate commerce in favor of competing intrastate commerce of like character. The nature of the subject of taxation makes apportionment unnecessary; there is no attempt to tax interstate activity carried on outside Mississippi's borders. No other state can repeat the tax. For these reasons the commerce

clause does not invalidate this tax. The judgment is affirmed. 337 U.S. at 668, 93 L.Ed. at 1620-21.

A case involving the final leg of an interstate shipment is *McKeigney* v. *Dunn Brothers, Inc.*, 224 Miss. 762, 80 So.2d 802 (1955), suggestion of error overruled, 81 So.2d 712 (1955), appeal dismissed *sub nom. Dunn Brothers, Inc.* v. *Stone,* 350 U.S. 878 (1955). In *Dunn* the tax was levied upon the activities of Dunn Brothers under the following state of facts. Tennessee Gas Transmission Company was engaged in constructing an interstate pipeline which crossed several states, including Mississippi. It purchased pipe for this purpose from California and had it delivered by common carriers to its right-of-way in Mississippi. To accomplish this, it had the railroad company deliver the pipe from the foundry in California to depots or rail heads in Mississippi as near to its right-of-way as was feasible. It engaged Dunn Brothers, a Texas corporation holding a certificate of public convenience and necessity for interstate commerce, to deliver the pipe by motor truck from the depots or rail heads in Mississippi to the rights-of-way of the transmission company. The transmission company, as consignor, shipped the pipe by railroad to itself as consignee to the various depots and rail heads in Mississippi. Bills of lading were issued accordingly. The transmission company paid the freight, and when the shipments arrived at the rail destination, an agent of the transmission company inspected and accepted the pipe. Dunn Brothers then took charge of the shipment, and with the transmission company as both consignor and consignee, unloaded the car and delivered it to the right-of-way, for which service the transmission company paid Dunn Brothers. Based on *Interstate Oil Pipeline Co.* v. *Stone, supra,* and other decisions of the United States Supreme Court, this Court held that the tax was validly levied.

More recently, this Court upheld a tax on the gross income derived from the operation of a television cable system where a percentage of the signals rebroadcast by the taxpayer were received from outside the State. Rhoden v. Goodling Enterprises, Inc., 295 So.2d 433 (Miss. 1974).

In *Convoy Company* v. *Taylor*, 334 P.2d 772 (Wash. 1959), the Supreme Court of the State of Washington upheld a tax on an activity almost identical to that involved in the present case. In *Convoy,* the proof showed that Ford Motor Company, the shipper in that case, maintained control of the automobiles shipped so as to protect itself if the dealer became bankrupt or failed to pay for the units.

In the present case, General Motors maintains control of the vehicles, at least until they are shipped out by Taxpayer. The automobiles are consigned to General Motors at Jackson and are their property to do with as they see fit until they are ultimately transported by Taxpayer to the purchasing dealer.

It will be noted that Taxpayer has a large operation in this State. It is dependent upon the State for police protection and other State services the same as other citizens. It should pay its fair share of taxes so long, but only so long, as the tax does not discriminate against interstate commerce, and there is no danger of interstate commerce being smothered by cumulative taxes of several states. There is no possibility of any other state duplicating the tax involved in this case.

For the reasons stated, we hold that the tax was valid and the decree of the trial court is affirmed.

AFFIRMED.

PATTERSON, P.J., INZER, P.J., AND SMITH, ROBERTSON, SUGG, WALKER, BROOM AND LEE, JJ., CONCUR.

IN THE SUPREME COURT OF MISSISSIPPI
TUESDAY, APRIL 13, 1976, COURT SITTING

#48,590

COMPLETE AUTO TRANSIT, INC.

vs.

CHARLES R. BRADY, JR., CHAIRMAN
MISSISSIPPI STATE TAX
COMMISSION

(Filed April 13, 1976)

This cause having been submitted at a former day of this Term on the record herein from the Chancery Court, First Judicial District of Hinds County and this Court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order, adjudge and decree that the decree of said Chancery Court rendered in this cause on the 6th day of August, 1974—be and the same is hereby affirmed. It is further ordered, adjudged and decreed that the appellant and Fidelity & Deposit Company of Maryland, sureties on the appeal bond herein, do pay all of the costs of this appeal to be taxed for which let proper process issue.

MINUTE BOOK "BR" PAGE 424

I, Mrs. Julia H. Kendrick, Clerk of the Supreme Court of the State of Mississippi, do hereby certify that the foregoing is a true and correct copy of the judgment entered by the Court in the cause therein stated, as the same appears of record on file in my office.

Given under my hand, with the seal of said Court affixed, at office in the City of Jackson, Miss., this the 24th day of June A. D., 1976.

/s/ Julia H. Kendrick
Clerk Supreme Court

IN THE SUPREME COURT OF MISSISSIPPI

(Title omitted in printing)

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

(Filed June 9, 1976)

Notice is hereby given that Complete Auto Transit, Inc., the appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of Mississippi affirming the decree upholding the assessment of sales tax, entered in this action on April 13, 1976.

This appeal is taken pursuant to 28 U.S.C. § 1257 (2).

Robert C. Cannada
D. Carl Black, Jr.
Alan W. Perry
Rhesa H. Barksdale
By: /s/ Robert C. Cannada
Counsel for Appellant

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(Certificate omitted in printing)